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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

PAUL SINGH, individually and as
successor-in-interest to decedent MISTY
HOLT-SINGH; PAUL SINGH JR.,
individually; and MIA SINGH, by and
through her Guardian Ad Litem PAUL
SINGH,

Plaintiffs,

vs.

CITY OF STOCKTON, on its own behalf
and on behalf of its departments,
including, but not limited to, the
STOCKTON POLICE DEPARTMENT;
OFFICER MARK BOLING; OFFICER
DAVID BROWN; OFFICER BRAD
BURRELL; OFFICER GEORGE
CAMACHO; OFFICER RALPH
DOMINGUEZ; OFFICER PANCHITO
FREER; OFFICER MATTHEW
GARLICK; OFFICER ERIKA
GONZALEZ; OFFICER JOHN GRIFFIN;

STR-CV-11CR-2016-3660

COMPLAINT AND DEMAND FOR
JURY TRIAL1. Violations of Civil Rights (Individual
Liability) 42 U.S.C. § 19832. Violations of Civil Rights (Entity
Liability) 42 U.S.C. § 19833. Negligence pursuant to Government
Code Sections 820 and 815.2

4. Battery

5. Violations of Civil Rights under Cal.
Civ. Code § 52.1

THIS CASE HAS BEEN ASSIGNED TO JUDGE
BARBARA A. KRONLUND IN DEPARTMENT 4
FOR ALL PURPOSES, INCLUDING TRIAL

SHERNOFF BIDART
ECHEVERRIA BENTLEY
ATTORNEYS FOR INSURANCE POLICYHOLDERS

1 OFFICER GABRIEL GUERRERO;
2 OFFICER DAVID HILAND; OFFICER
3 CLIFF HOFFMAN; OFFICER RODGER
4 HOLSCHER; OFFICER KEVIN KNALL;
5 OFFICER SEAN KONOSKE; OFFICER
6 PATRICK MAYER; OFFICER KRISTEN
7 MCCLURE; OFFICER JULIO MORALES;
8 OFFICER RYAN MORRIS; OFFICER
9 RYAN RANKIN; OFFICER MIKE
10 RODRIGUEZ; OFFICER IVAN ROSE;
11 OFFICER LANCE SAUR; OFFICER
12 MICHAEL SERNA; OFFICER PETE
13 SMITH; OFFICER TELLY STRIKA;
14 OFFICER JASON UNDERWOOD;
15 OFFICER NETO URIAS; OFFICER
16 SAMNANG VEN; OFFICER EDWARD
17 WEBB; OFFICER DRAKE WIEST;
18 OFFICER RONALD ZALUNARDO; and
19 DOES 1 to 100, inclusive,

20
21 Defendants.

I.

INTRODUCTION

1. Under California law, city police departments and their officers can be liable for utilizing excessive force in performing their duties and for depriving citizens of their civil rights—including the right to life and liberty. Even officers' tactical conduct and decisions preceding the use of deadly force are relevant considerations in determining whether the use of force was unreasonable.

2. Here, the City of Stockton Police Department exacerbated a bank robbery and endangered innocent civilians by improperly responding to the robbery (with lights on, in full view of the perpetrators, causing them to grab additional hostages), engaging in an hour-long, rolling gun battle with the bank robbers through populated city streets, at times over 50 police vehicles in pursuit, and ultimately allowing 32 officers to indiscriminately fire over 600 bullets into the perpetrators' disabled vehicle without command, knowing a hostage was inside. Ten of those bullets—all fired from *police weapons* without command and without regard for the innocent life—struck hostage, wife, and mother-of-two Misty Holt-Singh ("Misty"), causing her death. The tactical conduct, the lack of proper supervision, the deprivation of civil rights, and the excessive and unreasonable use of deadly force will subject the City of Stockton and its officers to liability for all the harm they caused in taking Misty's life.

3. On July 16, 2014, Misty was at the Bank of the West branch on Thornton Road in Stockton, California to make an ATM withdrawal. Just after 2:00 p.m., three armed gunmen—two of whom had robbed the *same* branch seven months earlier and were well known members of the Norteno Street Gangs, North Central Stockton—forced Misty and others inside the bank, where the gunmen jumped the teller counter, controlled the bank, and proceeded with the robbery.

4. After the robbery, the three armed robbers left the inside of the bank with the bank manager, Kelly Huber. Misty remained unharmed, and safe inside the bank.

1 5. The first responding law enforcement personnel were from Stockton
2 Police Department—a department that has been roundly criticized for its lack of
3 training and failure to staff experienced officers. Contrary to established procedures, the
4 Stockton Police arrived at the bank branch with lights on, in full view of the
5 perpetrators. The responding officer drew his weapon and threatened to kill the
6 perpetrators. This caused them to retreat back into the bank, grab additional hostages
7 (including Misty), and flee in the bank manager's vehicle.

8 6. An hour-long, high-speed pursuit followed, with Stockton Police officers
9 firing on the moving vehicle as they traveled through densely populated areas. Police
10 gunfire was directed from moving police vehicles at the moving suspect vehicle, which
11 created an unreasonable risk to civilians in the area and hostages in the vehicle as well
12 as inciting an already agitated situation. Despite air support, the rolling gun battle
13 continued with over 50 law enforcement vehicles chasing the suspect vehicle.

14 7. Eventually, the police disabled the vehicle and surrounded it. Here, the
15 suspects could not escape. Their vehicle had been immobilized by the police and they
16 were surrounded.

17 8. By then, the officers knew that Misty was the only remaining hostage.
18 Misty was the most vulnerable person in that situation—her safety should have been
19 paramount, but the police took the opposite approach. Rather than secure her safety,
20 and ensure her well-being, officers indiscriminately opened fire on the vehicle without
21 command. Instead of taking reasonable and appropriate steps to remove Misty safely
22 from the situation, the Stockton Police Department opened fire, and continued to fire
23 wildly at the vehicle—and at Misty. Thirty-two officers fired over 600 bullets at the
24 vehicle in the span of a few seconds. Of the ten bullets that struck Misty, every single
25 one was fired by officers with the Stockton Police Department.

26 9. This unreasonable use of deadly force was the polar opposite of police's
27 mission to protect and serve the public. Instead, they actively deprived a family of its
28 wife and mother, and destroyed the life of an innocent hostage. Misty's right to life and

1 liberty were violated by the officers. Had they acted reasonably, she would be alive
2 today.

3 10. Even the Police Foundation—an independent research group based in
4 Washington, D.C. that conducted a detailed external analysis and review of the
5 incident—found that officers continued shooting long after the threat had ended, many
6 officers did not have a clear line of sight into the vehicle, and that the Stockton Police
7 Department's firing of "600 rounds [was] excessive and unnecessary."

8 11. Misty left behind her husband Paul; her son, Paul Jr.; and her daughter,
9 Mia.

10 II.

11 THE PARTIES

12 A. Plaintiffs

13 12. At all relevant times Paul Singh was a resident of the City of Stockton,
14 County of San Joaquin. Paul Singh is the surviving spouse of decedent Misty Holt-
15 Singh. Paul Singh is acting both individually and as the successor-in-interest to the
16 estate of Misty Holt-Singh. An affidavit as required by California Code of Civil
17 Procedure Section 377.32 has been filed in this action. Based upon information and
18 belief, Misty Holt-Singh briefly survived her multiple gunshot wounds inflicted by the
19 City of Stockton, suffering terrible pain, emotional distress, fear, anxiety, stress, and
20 worry, before eventually expiring due to the acts of the City of Stockton. Paul Singh
21 therefore proceeds both on an individual basis and as successor-in-interest to the claims
22 of Misty Holt-Singh.

23 13. At all relevant times Paul Singh Jr. and Mia Singh were residents of the
24 City of Stockton, County of San Joaquin. Paul Singh Jr. and Mia Singh are the surviving
25 children of Misty Holt-Singh.

26 14. Plaintiffs Paul Singh, Paul Singh, Jr., and Mia Singh are the sole surviving
27 heirs of Misty Holt-Singh and are the only individuals who have standing to bring a
28 wrongful death action for the death of Misty under California Code of Civil Procedure

§377.60. As a result of the actions described herein, the Singh family lost the familial association and relationship with their wife and mother, and bring claims both in a survivorship capacity and for the loss of familial association and wrongful death.

B. Defendants

15. Defendants Officer Mark Boling, Officer David Brown, Officer Brad Burrell, Officer George Camacho, Officer Ralph Dominguez, Officer Pancho Freer, Officer Matthew Garlick, Officer Erika Gonzalez, Officer John Griffin, Officer Gabriel Guerrero, Officer David Hiland, Officer Cliff Hoffman, Officer Rodger Holscher, Officer Kevin Knall, Officer Sean Konoske, Officer Patrick Mayer, Officer Kristen McClure, Officer Julio Morales, Officer Ryan Morris, Officer Ryan Rankin, Officer Mike Rodriguez, Officer Ivan Rose, Officer Lance Saur, Officer Michael Serna, Officer Pete Smith, Officer Telly Strika, Officer Jason Underwood, Officer Neto Urias, Officer Samnang Ven, Officer Edward Webb, Officer Drake Wiest, and Officer Ronald Zalunardo at all relevant times were employed as law enforcement officers by Defendant City of Stockton, and were acting within the course and scope of their employment. These defendants are being sued in their individual capacity. Based upon information and belief, each of these officers fired on the disabled vehicle. It is unknown at this time the identity of the officers that fired the 10 fatal bullets as the investigation is continuing.

16. At all relevant times, Defendant City of Stockton, is, and was, a governmental entity. The appropriate governmental claims for each plaintiff have been filed with the City of Stockton. The appropriate Governmental Claims were timely filed, in accordance with the parties tolling agreement (Exhibit E), with the City of Stockton on February 4, 2015, pursuant to California Government Code § 910. (A copy of the § 910 Claim is attached as Exhibit G.) The City received the § 910 Claim on February 9, 2015. (Exhibit H.) The City of Stockton failed to act on the claim within 45 days, giving rise to the right to bring this action. (See California Government Code §912.4(c).)

18. Plaintiffs are informed and believe and on that basis allege that at all times mentioned herein the defendants, and each of them, were the agents, joint venturers, servants, employees, assistants, and consultants of each other, and as such were acting within the course, scope, and authority of said agency, joint venture, and employment, and that each and every defendant, when acting as a principal, was negligent and reckless in the selection, hiring, entrustment, and supervision of each and every other defendant as an agent, servant, employee, assistant, or consultant.

FACTUAL ALLEGATIONS

19. Paul Singh married Misty in December 1999. They had two children, son Paul Jr. and a daughter Mia. Misty and Paul remained deeply in love and had plans to grow old together.

20. Misty and her two children were incredibly close. She was Paul Jr.'s confidant—the person from whom he would seek guidance and counseling. And Mia was just entering her teenage years, a very important time in a young girl's life to have the support, guidance, and wisdom of her mother.

21. But on July 16, 2014, the Singh family's lives were forever changed.

B. The July 16, 2014 robbery

22. On July 16, 2014, 41-year-old Misty went to the Bank of the West on Thornton Avenue in Stockton, California, with her 12-year-old daughter Mia to withdraw money from the ATM. Misty parked in front of the bank and walked to the ATM while her daughter remained in the car. One minute later, Gilbert Renteria, Alex Martinez, and Jaime Ramos, approached the bank armed with guns. Two suspects secured the security guard, while the third grabbed Misty from the ATM and pulled her inside the bank.

23. After grabbing money from the vault, the suspects exited the bank with the bank manager, Kelly Huber. The bank robbers left the inside of the bank with Misty unharmed and safe inside the bank.

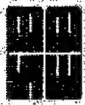
24. During the robbery, a Stockton police car arrived at the scene and pulled up alongside the Bank parking lot with its lights on. Shortly thereafter, another police car arrived and parked on the side of the Bank parking lot. A third police car parked in the parking lot, fully visible to those exiting the bank. After the robbers left the bank with only Huber, Stockton police officers immediately drew their weapons and yelled threatening remarks, forcing all three robbers back into the bank.

25. Upon reentering the bank, the suspects ordered Misty off the ground, and held her at gunpoint. Renteria, Martinez, and Ramos then exited the bank with Misty, the Bank Manager Kelly Huber, and bank employee Stephanie Koussaya at gunpoint.

26. Mia, still sitting terrified in the car, contacted her father, letting him know that the bank was robbed and her mother had been taken.

C. Stockton Police engage in a high speed pursuit through Stockton and Lodi

27. The three gunmen left the bank with the 3 hostages and entered Huber's Explorer. Huber was ordered to drive, with one suspect placed in the passenger seat, another between Misty and Koussaya in the back seat, and a third suspect in the very back of the vehicle.

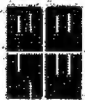


1 28. The police began a high speed pursuit through residential streets, firing
2 their weapons numerous times at the vehicle containing the hostages. The pursuit
3 ultimately lasted approximately one hour and reached speeds in excess of 120 mph. The
4 high-speed pursuit went onto city and residential streets in both Lodi and Stockton.

5 29. Shortly after the pursuit started, Huber was accidentally shot in the leg by
6 Jaimi Ramos. She sustained a fractured left ankle from a gunshot wound, as well as a
7 gunshot wound to the right thigh. At 14:18:34, just two minutes after leaving the bank,
8 Huber was removed from the vehicle so one of the suspects could drive. Huber was not
9 killed by the bank robbers.

10 30. The high speed pursuit continued, and included air support. The officers
11 continued to discharge weapons from moving vehicles at the moving suspect vehicle.
12 Toward the end of the pursuit at 15:15:54, Koussaya escaped the fleeing vehicle which
13 was under fire by the armed response of Stockton police officers. Koussaya sustained a
14 skull fracture and several abrasions as a result of falling out of the vehicle, but she was
15 not shot or killed by the bank robbers.

16 31. At 15:17:56, the vehicle containing the three gunmen and hostage Misty
17 Holt-Singh was disabled. Despite instructions to hold their fire, an indiscriminate
18 barrage of police gunfire was directed at the suspect vehicle, with full knowledge that
19 hostage Misty Holt-Singh remained inside. Over 600 rounds were fired by 32 police
20 officers at the vehicle containing a known innocent hostage. This was done without a
21 line of sight on the suspects, without a line of sight on the hostage, and without
22 selecting targets within the vehicle. Instead, the 32 officers rapidly discharged their
23 firearms at the vehicle itself, indiscriminately firing without concern for who, or what,
24 they might strike with their weapons fire. One angle of the devastation to the vehicle
25 can be seen in the following photo:



32. The inability of the police officers to effectively direct their deadly gunfire away from Misty during and immediately following the termination of the pursuit created an unreasonable risk of causing her death or serious physical injury. This indiscriminate gunfire was counter to the primary police objective in hostage situations—to take necessary steps to free innocent persons who are endangered and held against their will, and take reasonable action having a high probability of neutralizing the deadly threat or preventing the situation from escalating. Instead, Misty Holt-Singh was struck and killed by 10 bullets fired by police officers. Based upon information and belief, she briefly survived the barrage of gunfire by the City of Stockton, before expiring in fear, pain, and terror due to her multiple City-inflicted gunshot wounds.

33. The use of unreasonable deadly force by Stockton Police officers is not uncommon. Within the last six years alone Stockton Police officers shot 27 individuals, killing 17.

D. The Stockton Police Department failed to follow standard, well-established protocol.

34. The Stockton Police department failed to follow standard and well-recognized protocol when responding to the in-progress armed bank robbery. The first arriving officers should arrive in stealth to avoid detection by the perpetrators. Officers want to preserve the element of surprise to avoid a hostage situation in which the people inside the bank may be harmed. In other words, the officers do not want the

1 criminals to know of their presence because doing so would endanger the innocent
2 hostages inside the establishment.

3 35. This fundamental protocol is set forth in the 1992 Model Policy for a Bank
4 Alarm Response from the IACP National Law Enforcement Policy Center (Dept of
5 Justice) as follows:

6 B. Responding Officer Procedures

7 1. Responding officers shall use appropriate vehicular warning devices when
8 approaching the scene, but the siren will not be used within the hearing
9 range of the reported robbery.

10 3. The first unit on the scene shall serve as the primary unit until relieved by
11 a supervisor, and shall take a position in front of the facility that provides
12 good observation without being easily visible to those inside. The primary
13 unit shall report on observable conditions at the location to the dispatcher
14 but should not initially approach the building.

15 36. The Stockton Police Department's General Order for Robbery Alarms
16 (including Hold-Up Alarms and Bank Alarms) sets forth this same requirement that the
17 initial officers responding to the scene should avoid detection because a "hostage
18 situation could be initiated by police response being recognized by the robbers."

19 STOCKTON POLICE DEPARTMENT

20 GENERAL ORDER

21 ROBBERY ALARMS

22 SUBJECT

23 DATE: March 1, 2005

24 NO: N-1

25 FROM: CHIEF THOMAS T. MORRIS

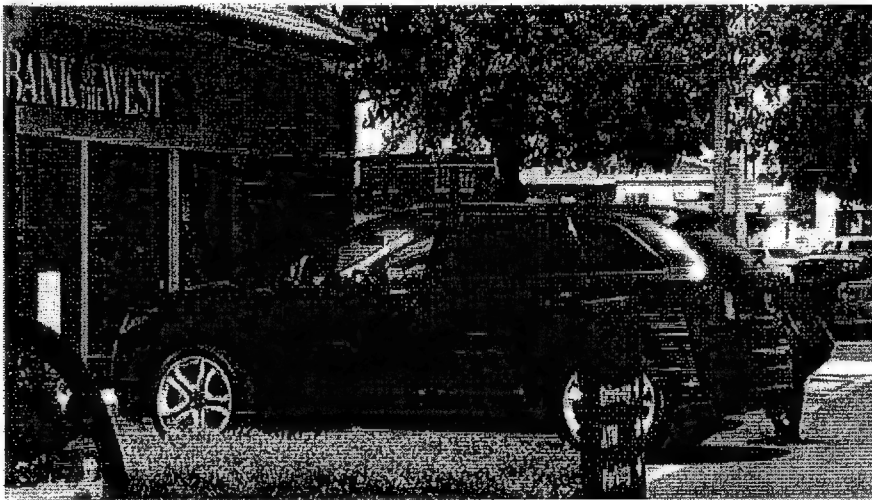
26 TO: ALL PERSONNEL

27 INDEX: Alarm Calls
28 Robbery Alarms
Hold-up Alarms
Bank Alarms

B. Bank and Business Robbery Alarms

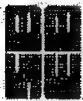
1. Immediately upon receipt of a holdup alarm from a bank or business by the Telecommunications Center, or telephone call of a robbery in progress, field units normally will be informed on all six radio channels and the Telecommunications Center will dispatch a minimum of three units to the scene.
2. Assigned responding units shall give their location upon receiving the call and will answer the radio as dispatched.
 - a. Units will respond "Code 3" and may discontinue the use of red lights and siren when close to arrival and respond the remainder of the distance in accordance with traffic laws. The exact time to discontinue "Code 3" response is to be decided by each individual member assigned to respond, taking into consideration the fact a hostage situation could be initiated by police response being recognized by the robbers.

37. Instead, as confirmed by video footage, the City of Stockton's police arrived at the Bank of the West with lights on and took positions that were in full view of the bank robbers. Instead of allowing the gunmen to continue leaving the Bank as was originally planned, the police's flawed response forced the gunmen back into the bank, where they grabbed more hostages, including Misty, and then fled in the bank manager's vehicle.



(Photograph showing an officer in full view of the Bank windows.)

38. The department's negligent, reckless, intentional actions continued for well over an hour. Instead of trying to preserve the safety of the hostage, the Stockton



1 Police Department engaged in a high-speed chase through residential streets and public
2 highways. During this chase, which lasted over an hour, officers repeatedly discharged
3 their weapons at the fleeing vehicle even though it was known there was an innocent
4 hostage inside.

5 39. The inability of the police officers to effectively direct their deadly gunfire
6 away from Misty during and immediately following the termination of the pursuit,
7 created an unreasonable risk of causing her death or serious physical injury. This was
8 counter to the primary police objective in hostage taking situations—to first take all
9 necessary steps to free innocent persons who are endangered and held against their
10 will. The chasing officers could have withdrawn from the pursuit, allowing the police
11 helicopter to visually track the escaping vehicle until Misty was free of the vehicle. The
12 fact that two other hostages were already expelled alive from the vehicle and the bank
13 robbers had not attempted to use deadly force against the unarmed guard at the bank—
14 he was merely tied up—and Misty was never shot by the fleeing suspects, suggests that
15 she was not going to be fatally harmed by the suspects absent the armed response of
16 police officers.

17 40. In fact, the Police Foundation, a research group in Washington, D.C.,
18 conducted an independent review of the shooting of Misty Holt-Singh. Disclosed in
19 that report is the fact that Stockton Police officers acknowledged they “were angry that
20 officers were shooting at the vehicle without a clear, articulable threat,” that “officers
21 continued shooting after threats had been eliminated,” and that there were “officers
22 who did not see an active threat but did fire their weapons based on others firing their
23 weapons.” The Police Foundation sums up the unreasonable nature of the Stockton
24 Police Department’s response by stating:

25 Based on interviews, the review team determined that some officers fired
26 their weapons in response to fellow officers firing. More than 600 rounds
27 were fired at the suspect vehicle, many after the threat had been
28 eliminated . . . However, the review team did determine that 600 rounds
were *excessive and unnecessary*.



1 E. The Stockton police failed to train and supervise its employees to follow up on
2 known leads of one of the perpetrators following the January 31, 2014 robbery.

3 41. In the 30 months before the July 16, 2014 robbery, the Bank of the West
4 branch on Thornton Rd. in Stockton had been victimized by numerous armed robberies.
5 One of these robberies took place on January 31, 2014. That day, Stockton police officers
6 arrived at the scene shortly after the robbery and began their investigation. After taking
7 the statement of a bank employee, Officer Sandoval on January 31, 2014, located a
8 suspicious vehicle reported southwest of the bank belonging to Gilbert Renteria, Jr.,
9 who was one of the gunmen from the January 31 robbery.

10 42. The vehicle was impounded, and subsequently searched pursuant to a
11 warrant on February 4, 2014. Officers located Gilbert Renteria's California Identification
12 Card within the vehicle along with two large freezer bags of live ammunition—one bag
13 contained over 140 rounds of rifle ammunition.

14 43. Gilbert Renteria, Jr. matched the description of one of the suspects of the
15 January 31, 2014 robbery. Despite having located, identified, and impounded the
16 suspicious vehicle on January 31, 2014—registered to Gilbert Renteria, Jr., containing his
17 identification and a store of live ammunition—the Stockton Police Department failed to
18 supervise its employees in following up on this important lead. Renteria, who was a
19 known criminal on parole and could have been arrested for possessing firearms,
20 continued to live in Stockton, and was never questioned about his possible role in the
21 robbery. The Stockton Police Department failed to manage, direct, and ensure its
22 officers and detectives followed protocol in investigating a possible suspect in the
23 January 2014 robbery.

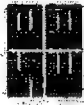
24 44. Had there been any reasonable supervision of its employees by Stockton
25 police, Renteria would have been apprehended long before having the opportunity to
26 repeat the same crime on July 16, 2014. As a result, Renteria was never questioned or
27 apprehended following the January 31, 2014 robbery. Renteria and Alex Martinez
28 clearly felt that they could repeat virtually the exact same crime at the same location on
July 16, 2014 without fear of being caught.

1 E. The City of Stockton and the Singhs have agreed that the Singhs are granted
2 partial relief from the bankruptcy discharge injunction in order to commence
3 and prosecute this action to recover the City's insurance proceeds—up to \$39
4 million

4 45. On June 28, 2012, prior to the events that took the life of Misty Holt-Singh,
5 the City of Stockton filed its bankruptcy petition in the United States District Court,
6 Eastern District of California, commencing a bankruptcy case (*In re City of Stockton*,
7 *California*, Case No. 12-32118 (Bank. E.D. Cal.) and referenced by its pleadings as
8 "Docket" throughout this section) under chapter 9 of title 11 of the United States Code
9 (the "Bankruptcy Code").

10 46. The bankruptcy court entered its order for relief under 11 U.S.C. § 921(d)
11 on April 1, 2013, finding that the petition satisfies the requirements under the
12 Bankruptcy Code and that the City of Stockton was eligible for relief under chapter 9.
13 See Docket No. 843. Thereafter, the City of Stockton filed its motion for the entry of an
14 order to set August 16, 2013 as the deadline for filing claims against the City that arose
15 prepetition and prior to the August 16, 2013 deadline. See Docket No. 919 (the "Bar Date
16 Motion"). The bankruptcy court entered its order granting the Bar Date Motion on June
17 13, 2013. See Docket No. 960.

18 47. Yet the City has long been aware of the Singhs' intent to hold the City
19 liable for the claims arising from the death of Misty Holt-Singh. Misty's death at the
20 hands of Stockton Police officers was national news, with the City responding to
21 numerous requests for media comments and even providing its own press conferences
22 about the actions of its officers. As early as July 31, 2014, the Singh family sent a Public
23 Records Act request to the City regarding the "police response to the attempted bank
24 robbery . . . the subsequent police chase of the suspects/hostages, and the disabling of
25 the vehicle, officer gunfire and deaths of two of the suspects as well as the hostage,
26 Misty Holt-Singh." (Exhibit A.) That same day, the Singh family also contacted Stockton
27 Police Chief Eric Jones regarding additional inquiries and discussions about Misty's
28 death. (Exhibit B.) Two weeks later, the City requested an extension to respond. (Exhibit

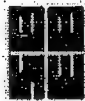


1 C.) The City responded with a slew of documents on September 11, 2014 and September
2 24, 2014. (Exhibit D.)

3 48. Pursuant to discussions with the City, on or about January 7, 2015, the
4 Singhs and the City entered into a Tolling Agreement extending the period of time for
5 the Singhs to file their Government Claims Act claim from January 16, 2015 to April 16,
6 2015. (Exhibit E.) In January 2015, the City and the Singhs engaged in mediation with
7 respect to this claim. Later, the City sent a January 30, 2015 letter to the Singhs' counsel
8 explaining that through *litigation* the bankruptcy formula applicable to General Liability
9 Claims would be applied to the Singhs' claim. (Exhibit F.) Finally, the Singhs complied
10 with the requirements of the Amended plan—which defined "General Liability Claim"
11 as "a tort or contract Claim filed against the City pursuant to the Government Claims
12 Act, California Government Code section 810 *et seq.*"—by timely filing their claim
13 pursuant to the Government Claims Act on February 4, 2015. (Exhibit G.) At that time,
14 the City was formally placed on notice—though it had long been informally aware—of
15 the Singhs' intent to hold the City liable on account of their General Liability Claim. The
16 City's receipt of the Singhs' Government Claim was confirmed by way of certified mail
17 return receipt. (Exhibit H.) The City even offered to attempt further resolution in June
18 2015. (Exhibit I.) Finally, the Singhs filed an Amended Proof of Claim with the
19 Bankruptcy Court on November 20, 2015. (A copy of the Amended Claim—with its
20 own internal exhibits omitted—is attached to this Complaint as Exhibit J.) Thus, the
21 Singh family holds a claim in the City's bankruptcy case represented by the Amended
22 Claim. (Exhibit J.)

23 49. After litigating the matter in the Bankruptcy Court, the City of Stockton
24 and the Singhs reached a stipulation to permit this matter to proceed on March 15, 2016.
25 (See Exhibit K.) That stipulation was approved and entered as an order by the
26 Bankruptcy Court on March 17, 2016, and provides as follows:

27 a) Pursuant to Article XI.A of the Plan and § 944 of the Bankruptcy Code,
28 confirmation of the Plan discharged all non-excepted, pre-confirmation



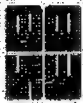
debts of the City in exchange for the rights afforded in the Plan and the treatment of all holders of Claims (as the term "Claims" is defined in the Plan). The Singh Family Claim was not excepted from such discharge. (Exhibit K, Stipulation ¶ 1.)

- b) The Singhs' Government Claim shall be deemed to be a timely filed proof of claim pursuant to the Ninth Circuit's informal proof of claim doctrine under *In re Sambo's Restaurants, Inc.*, 754 F.2d 811, 812 (9th Cir. 1983), and its progeny. The Amended Proof of Claim shall be deemed to be a properly and timely filed amendment to the Government Claim. (Exhibit K, Stipulation ¶ 2.)
- c) The statute of limitations under state law for the Singh Family to commence an action against the City among others on account of the Claims expires on July 16, 2016. (Exhibit K, Stipulation ¶ 4.)
- d) The Singh Family has been granted partial relief from the Discharge Injunction in order to commence a new action—this action—in the Superior Court to litigate all causes of action against the City, among other parties, on the underlying Claims (the "New Action"). The Singhs and the City of Stockton agreed that the legal and factual merits of the Claims shall be determined by the Superior Court, and that the Superior Court has jurisdiction to determine the validity and amount of the Claims. (Exhibit K, Stipulation ¶ 5.)
- e) The complaint in the New Action shall state, as it does here, that: (1) any judgment, settlement, or other final determination obtained by the Singh Family against the City shall be treated in accordance with the terms of the Plan for claimants holding claims classified in Class 14 – Claims of Certain Tort Claimants; and (2) the Singh Family shall not execute on any judgment or settlement or seek recovery as against the City or any



property of the City except as provided for in the Plan. (Exhibit K, Stipulation ¶ 6.)

- f) Upon entry of any judgment, settlement or other final determination in the New Action of the validity and the amount of the causes of action underlying the Singh Family Claim, the City will be legally obligated to pay as damages such judgment, settlement, or other final determination subject to the provisions of the Plan, including but not limited to, the application of the discount as provided for in the treatment of Class 14 – Claims of Certain Tort Claimants in which the Singh Family Claim was placed. (Exhibit K, Stipulation ¶ 7.)
- g) As set forth in the Plan, “[t]he Insured Portion of each Allowed General Liability Claim is not Impaired, and shall be paid by the applicable excess risk-sharing pool.” The stipulation between the City of the Stockton and the Singhs was not intended in any way to impair, restrict, diminish or enlarge the Singh Family’s ability to recover the Insured Portion (as “Insured Portion” is defined in the Plan) of any eventual judgment, settlement, or award against the City from the applicable excess risk sharing pool. For the avoidance of any doubt, the “property of the City” referenced in paragraph (e) above does not include the Insured Portion. (Exhibit K, Stipulation ¶ 8.)
- h) Except as expressly provided in Exhibit K, all rights of the City to object to or defend against the claims in the New Action on any ground are expressly preserved. However, so long as the complaint and other allegations in the New Action are consistent with the statements in Paragraph 6 of this Stipulation, the City shall not assert in the New Action that: (1) the Discharge Injunction prohibits the Singh Family from pursuing the New Action in the Superior Court, or (2) the New Action is



1 barred by the applicable statute of limitations as long as the New Action is
2 filed by July 16, 2016. (Exhibit K, Stipulation ¶ 9.)
3

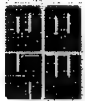
4 FIRST CAUSE OF ACTION

5 (Violations of Civil Rights (Individual Liability) 42 U.S.C. § 1983)

6 FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS, OFFICER MARK
7 BOLING, OFFICER DAVID BROWN, OFFICER BRAD BURRELL, OFFICER GEORGE
8 CAMACHO, OFFICER RALPH DOMINGUEZ, OFFICER PANCHO FREER, OFFICER
9 MATTHEW GARLICK, OFFICER ERIKA GONZALEZ, OFFICER JOHN GRIFFIN,
10 OFFICER GABRIEL GUERRERO, OFFICER DAVID HILAND, OFFICER CLIFF
11 HOFFMAN, OFFICER RODGER HOLSCHER, OFFICER KEVIN KNALL, OFFICER
12 SEAN KONOSKE, OFFICER PATRICK MAYER, OFFICER KRISTEN MCCLURE,
13 OFFICER JULIO MORALES, OFFICER RYAN MORRIS, OFFICER RYAN RANKIN,
14 OFFICER MIKE RODRIGUEZ, OFFICER IVAN ROSE, OFFICER LANCE SAUR,
15 OFFICER MICHAEL SERNA, OFFICER PETE SMITH, OFFICER TELLY STRIKA,
16 OFFICER JASON UNDERWOOD, OFFICER NETO URIAS, OFFICER SAMNANG
17 VEN, OFFICER EDWARD WEBB, OFFICER DRAKE WIEST, AND OFFICER RONALD
18 ZALUNARDO AND DOES 1-50 FOR VIOLATIONS OF CIVIL RIGHTS PURSUANT
19 TO 42 U.S.C. SECTION 1983, PLAINTIFFS PAUL SINGH, INDIVIDUALLY AND AS A
20 SUCCESSOR-IN-INTEREST TO DECEDENT MISTY HOLT-SINGH, PAUL SINGH JR.,
21 AND MIA SINGH ALLEGE:

22 50. Plaintiffs refer to each and every one of the above paragraphs, and
23 incorporate those paragraphs as though set forth in full in this cause of action.

24 51. Defendants while acting under the color of state law deprived Misty of
25 her rights, privileges, and immunities secured by the Constitution and the laws of the
26 United States including the Fourteenth and Fourth Amendments by subjecting her to
27 unreasonable and excessive force. Despite being instructed to "hold your fire" 32
28 officers fired over 600 bullets into a disabled vehicle knowing that Misty was inside. At

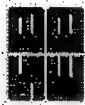


1 least 10 bullets struck Misty, killing her. All 10 of those bullets were shot by police
2 officers.

3 52. Misty's right to life and liberty and to be free from unreasonable searches
4 and seizures were violated by the officers. The inability of the police officers to
5 effectively direct their deadly gunfire away from Misty during and immediately
6 following the termination of the pursuit, created an unreasonable risk of causing her
7 death or serious physical injury. Additionally, before firing the officers made no
8 attempt to negotiate with the suspects, who were now trapped in their disabled vehicle.
9 Instead the officers violated protocol, and the commands of their superiors, blindly
10 opening fire on the vehicle, knowing that Misty remained inside.

11 53. At all material times, the use of force, including the intentional firing of
12 600 bullets fired by 32 officers described herein at a vehicle containing an innocent
13 hostage, was excessive and unnecessary and not justified or lawful under the
14 circumstances. The vehicle was disabled, and the bank robbers had no avenues of
15 escape. The Stockton police prematurely, intentionally, and with reckless disregard for
16 the well-being of the innocent hostage engaged in an armed assault on the disabled
17 vehicle containing the hostage. The actions at issue were official conduct undertaken in
18 a malicious, intentional, or recklessly or callously indifferent manner to Misty's
19 protected Constitutional rights and liberties.

20 54. Additionally, defendants' failure to follow established protocol in the
21 policing community, which lead up to the deadly shooting, also created an
22 unreasonable risk of harm to Misty, and caused an escalation of events leading to her
23 death. Knowing an armed robbery was in progress, the City of Stockton's police arrived
24 at the Bank of the West in full view of the armed gunmen with lights on and took
25 positions which were in full view of the bank robbers. Instead of allowing the gunmen
26 to continue leaving the Bank as was originally planned (without Misty), the gunmen
27 were forced back into the bank, grabbed more hostages, including Misty, and then fled.
28



1 55. The department's and its officers' negligent, reckless, and intentional
2 actions continued for well over an hour. Instead of trying to preserve the safety of the
3 hostage, the Stockton Police Department engaged in a high-speed chase through
4 residential streets and public highways. During this chase, which lasted over an hour,
5 officers repeatedly discharged their weapons at the fleeing vehicle even though it was
6 known there was an innocent hostage inside.

7 56. At all material times, the actions and omissions of each defendant were
8 intentional, wanton and/or willful, conscience shocking, reckless, malicious,
9 deliberately indifferent to Misty's rights, unreasonable, and committed with reckless
10 disregard of Misty's constitutional rights. The actions of the defendants—firing over 600
11 bullets at a vehicle knowing hostage Misty was inside and despite no command to fire,
12 indeed, even ignoring a command to "hold your fire"—constitute a malicious and
13 sadistic intent to harm Misty, divorced from the legitimate purposes of law enforcement
14 reacting and responding to hostage situations. The officers were "trigger happy" in
15 their response to the situation, and killed an innocent hostage as a result. Based on
16 information and belief, the defendants knew or should have known Misty Holt-Singh's
17 identity as a hostage, knew or should have known her family status, and despite that
18 knowledge, fired more than 600 bullets into the vehicle with reckless disregard as to
19 whether any hit Misty. Firing that many bullets into a vehicle without even attempting
20 to target the suspects—blind firing at objects within a vehicle—was sure to result in her
21 serious injury or death, exactly what occurred.

22 57. As a direct and proximate result of each Defendant's acts as set forth
23 above Paul Singh has suffered the loss of his wife Misty and Misty's love,
24 companionship, comfort, care, assistance, protection, affection, society, and moral
25 support. Paul has also suffered the loss of spousal consortium.

26 58. Paul has also suffered the following economic damages as a result of the
27 death of his wife Misty in an amount according to proof:

28 A. Funeral and burial expenses;



- B. The value of financial support that Misty would have contributed to the marriage during her life expectancy or the life expectancy of Paul, whichever is shorter;
- C. The loss of gifts or benefits that Paul would have expected to receive from Misty; and
- D. The reasonable value of household services that Misty would have provided.

59. As a proximate result of each Defendant's acts as set forth above, Paul Singh Jr. and Mia Singh suffered the loss of their mother, and their mother's love companionship, comfort, care, assistance, protection, affection, society, moral support, training and guidance.

60. Paul Jr. and Mia also suffered the following economic damages as a result of the death of their mother:

- A. The value of financial support that Misty would have contributed to the family during her life expectancy; and
- B. The loss of gifts or benefits that Paul Jr. and Mia would have expected to receive from Misty.

61. As a further proximate result of the aforementioned and unconstitutional conduct of defendants, Plaintiff Paul Singh, as successor-in-interest to Decedent Misty Holt-Singh, brings a claim for the pre-death pain and suffering inflicted on Misty Holt-Singh as her death was caused by the violation of federal law. (See *Chaudhry v. City of Los Angeles* (9th Cir. 2014) 751 F.3d 1096, 1105.)

62. As a further proximate result of the aforementioned unconstitutional conduct of Defendants, Plaintiffs were compelled to retain legal counsel and are entitled to reasonable attorneys fees pursuant to 42 U.S.C. Section 1988. Plaintiffs are also entitled to punitive damages pursuant to 42 U.S.C. Section 1983.



SECOND CAUSE OF ACTION

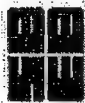
Violations of Civil Rights (Entity Liability) 42 U.S.C. § 1983

FOR A SECOND CAUSE OF ACTION AGAINST THE CITY OF STOCKTON,
AND DOES 51-100 FOR VIOLATIONS OF CIVIL RIGHTS PURSUANT TO 42 U.S.C.
SECTION 1983, PLAINTIFFS PAUL SINGH, INDIVIDUALLY AND AS A
SUCCESSOR-IN-INTEREST TO DECEDENT MISTY HOLT-SINGH, PAUL SINGH JR.,
AND MIA SINGH ALLEGE:

63. Plaintiffs refer to each and every one of the above paragraphs, and
incorporate those paragraphs as though set forth in full in this cause of action.

64. The intentional and unconstitutional actions of Defendants Officer Mark
Boling, Officer David Brown, Officer Brad Burrell, Officer George Camacho, Officer
Ralph Dominguez, Officer Pancho Freer, Officer Matthew Garlick, Officer Erika
Gonzalez, Officer John Griffin, Officer Gabriel Guerrero, Officer David Hiland, Officer
Cliff Hoffman, Officer Rodger Holscher, Officer Kevin Knall, Officer Sean Konoske,
Officer Patrick Mayer, Officer Kristen McClure, Officer Julio Morales, Officer Ryan
Morris, Officer Ryan Rankin, Officer Mike Rodriguez, Officer Ivan Rose, Officer Lance
Saur, Officer Michael Serna, Officer Pete Smith, Officer Telly Strika, Officer Jason
Underwood, Officer Neto Urias, Officer Samnang Ven, Officer Edward Webb, Officer
Drake Wiest, and Officer Ronald Zalunardo and Does 1-50 as well as other officers
employed by or acting on behalf of the City of Stockton, on information and belief, were
pursuant to the following customs, policies, practices, and/or procedures of the
Stockton Police Department, which were directed, encouraged, allowed, and/or ratified
by policy making officers for the City of Stockton, and the Stockton Police Department,
including on information and belief the Chief of Police of the Stockton Police
Department:

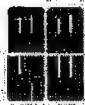
- A. To use or tolerate the use of excessive and/or unjustified force;
- B. To use or tolerate the use of unlawful deadly force;
- C. To cover-up violations of constitutional rights by:



1. Failing to properly investigate and/or evaluate complaints or incidents of excessive and unreasonable force;
2. Ignoring and/or failing to properly and adequately investigate and discipline unconstitutional or unlawful police activity; and
3. Using or tolerating inadequate, deficient, and improper procedures for handling, investigating and reviewing complaints of officer misconduct made under California Government Code Section 910 et seq.

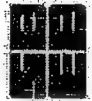
D. Failing to implement procedural safeguards to prevent constitutional violations stemming from the use of excessive force, with actual or constructive notice that omitting these procedural safeguards was likely to result in the unconstitutional deprivation of life and liberty and the unconstitutional and unreasonable search and seizure of citizens in the City of Stockton.

65. Defendants City of Stockton and Does 51-100 also failed to properly hire, train, instruct, monitor, supervise, evaluate, investigate, and discipline Defendants Officer Mark Boling, Officer David Brown, Officer Brad Burrell, Officer George Camacho, Officer Ralph Dominguez, Officer Pancho Freer, Officer Matthew Garlick, Officer Erika Gonzalez, Officer John Griffin, Officer Gabriel Guerrero, Officer David Hiland, Officer Cliff Hoffman, Officer Rodger Holscher, Officer Kevin Knall, Officer Sean Konoske, Officer Patrick Mayer, Officer Kristen McClure, Officer Julio Morales, Officer Ryan Morris, Officer Ryan Rankin, Officer Mike Rodriguez, Officer Ivan Rose, Officer Lance Saur, Officer Michael Serna, Officer Pete Smith, Officer Telly Strika, Officer Jason Underwood, Officer Neto Urias, Officer Samnang Ven, Officer Edward Webb, Officer Drake Wiest, and Officer Ronald Zalunardo and Doe Defendants 1-50 with deliberate indifference to Misty's constitutional rights, which were thereby violated as described above. The City of Stockton and the Stockton Police Department's training program was not adequate to train its officers regarding the constitutional



limits on the use of excessive force. The City of Stockton and the Stockton Police Department knew, because of a pattern of similar violations, or it should have been obvious to them, that the inadequate training program was likely to result in a deprivation of the right to life and liberty guaranteed by the Fourteenth Amendment and was likely to result in the unconstitutional and unreasonable search and seizure of citizens as guaranteed by the Fourth Amendment. Indeed, Misty is one of seventeen individuals killed by Stockton Police Officers in the last six years. From 2009-2014 Stockton Police Officers frequently utilized excessive and unreasonable force, shooting at least twenty-seven other individuals, and killing sixteen. Based on information and belief, the City of Stockton knew, or should have known, that a significant number of those 27 shootings were unjustified—yet the City failed to take any action to remedy the tide of unjustified shootings, aggressive police conduct, and inadequate hostage response. Based on information and belief, policy making officials at the City of Stockton and the Stockton Police Department were aware of prior similar unconstitutional practices involving hostage rights, the unreasonable and excessive use of force, and the unjustified shooting of individuals, yet condoned those practices or failed to train against a furtherance of those actions, which caused the officers to act as alleged above during the Bank of the West robbery.

66. Defendants Officer Mark Boling, Officer David Brown, Officer Brad Burrell, Officer George Camacho, Officer Ralph Dominguez, Officer Pancho Freer, Officer Matthew Garlick, Officer Erika Gonzalez, Officer John Griffin, Officer Gabriel Guerrero, Officer David Hiland, Officer Cliff Hoffman, Officer Rodger Holscher, Officer Kevin Knall, Officer Sean Konoske, Officer Patrick Mayer, Officer Kristen McClure, Officer Julio Morales, Officer Ryan Morris, Officer Ryan Rankin, Officer Mike Rodriguez, Officer Ivan Rose, Officer Lance Saur, Officer Michael Serna, Officer Pete Smith, Officer Telly Strika, Officer Jason Underwood, Officer Neto Urias, Officer Samnang Ven, Officer Edward Webb, Officer Drake Wiest, and Officer Ronald Zalunardo and Does 1-50 violated Misty's Fourteenth Amendment right to life and



1 liberty and her Fourth Amendment right to be free from unreasonable searches and
2 seizures, and the City of Stockton and the Stockton Police Department's failure to
3 provide adequate training was a cause of the deprivation of those rights.

4 67. As a direct and proximate result of each Defendant's acts as set forth
5 above, Paul Singh has suffered the loss of his wife Misty and Misty's love,
6 companionship, comfort, care, assistance, protection, affection, society, and moral
7 support. Paul has also suffered the loss of spousal consortium.

8 68. Paul has also suffered the following economic damages as a result of the
9 death of his wife Misty in an amount according to proof:

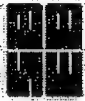
- 10 A. Funeral and burial expenses;
- 11 B. The value of financial support that Misty would have
12 contributed to the marriage during her life expectancy or the life
13 expectancy of Paul, whichever is shorter;
- 14 C. The loss of gifts or benefits that Paul would have expected to receive from
15 Misty; and
- 16 D. The reasonable value of household services that Misty would have
17 provided.

18 69. As a proximate result of each Defendant's acts as set forth above Paul
19 Singh Jr. and Mia Singh suffered the loss of their mother, and their mother's love
20 companionship, comfort, care, assistance, protection, affection, society, moral support,
21 training and guidance.

22 70. Paul Jr. and Mia also suffered the following economic damages as a result
23 of the death of their mother:

- 24 A. The value of financial support that Misty would have
25 contributed to the family during her life expectancy; and
- 26 B. The loss of gifts or benefits that Paul Jr. and Mia would have expected
27 to receive from Misty.

28



1 71. As a further proximate result of the aforementioned and unconstitutional
2 conduct of defendants, Plaintiff Paul Singh, as successor-in-interest to Decedent Misty
3 Holt-Singh, brings a claim for the pre-death pain and suffering inflicted on Misty Holt-
4 Singh as her death was caused by the violation of federal law. (See *Chaudhry v. City of*
5 *Los Angeles* (9th Cir. 2014) 751 F.3d 1096, 1105.)

6 72. As a further proximate result of the aforementioned unconstitutional
7 conduct of Defendants, Plaintiffs were compelled to retain legal counsel and are
8 entitled to reasonable attorneys fees pursuant to 42 U.S.C. Section 1988.

9
10 **THIRD CAUSE OF ACTION**

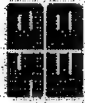
11 **(Negligence Pursuant to Government Code § 820 and 815.2)**

12 FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS CITY OF
13 STOCKTON AND DOES 51-100 FOR NEGLIGENCE PURSUANT TO GOVERNMENT
14 CODE §820 AND 815.2 PLAINTIFFS PAUL SINGH, INDIVIDUALLY AND AS A
15 SUCCESSOR-IN-INTEREST TO DECEDENT MISTY HOLT-SINGH, PAUL SINGH JR.,
16 AND MIA SINGH ALLEGE:

17 73. Plaintiffs refer to each and every one of the above paragraphs, and
18 incorporate those paragraphs as though set forth in full in this cause of action.

19 74. Plaintiffs allege this cause of action pursuant to Government Code §§ 820
20 and 815.2. California Government Code §820(a) provides that "a public employee is
21 liable for injury caused by his act or omission to the same extent as a private person."
22 Government Code §815.2(a) provides "[a] public entity is liable for injury proximately
23 caused by an act or omission of an employee of the public entity within the scope of his
24 employment if the act or omission would, apart from this section, have given rise to a
25 cause of action against that employee or personal representative."

26 75. A primary and fundamental objective of the Stockton Police Department
27 is to protect and serve the public—especially those most vulnerable, like Misty who was
28



1 an innocent hostage. On July 16, 2014, the Stockton Police Department negligently failed
2 to protect the public, including Misty Holt-Singh.

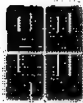
3 76. At all times, each Defendant owed a duty to Plaintiffs to follow
4 recognized and established police procedures when responding to an armed bank
5 robbery in progress. Defendants also owed a duty to Plaintiffs to use reasonable care in
6 employing deadly force, and to avoid using excessive force while pursuing and
7 attempting to apprehend fleeing criminals. Further, Defendants had a duty to refrain
8 from unreasonably creating the situation where force, including but not limited to
9 deadly force, is used, and to use appropriate tactics and force when confronted with a
10 hostage situation.

11 77. Additionally, these general duties of reasonable care and due care owed to
12 Plaintiffs by Defendants City of Stockton and Does 51-100, include but are not limited to
13 the following specific obligations:

- 14 A. To properly and adequately hire, investigate, train, supervise, monitor,
15 evaluate and discipline their employees, agents, and/or law enforcement
16 officers to ensure that those employees/agents/officers act at all times in
17 the public interest and in conformance with the law and accepted police
18 practices and policies;
- 19 B. To make, enforce, and at all times act in conformance with policies and
20 customs that are lawful and protective of individual rights; and
- 21 C. To refrain from making, enforcing, and/or tolerating the wrongful policies
22 and customs.

23 78. Defendants, through their acts and omissions, breached each and every
24 one of the aforementioned duties owed to the Plaintiffs.

25 79. As a direct and proximate result of each Defendant's acts as set forth
26 above Paul Singh has suffered the loss of his wife Misty and Misty's love,
27 companionship, comfort, care, assistance, protection, affection, society, and moral
28 support. Paul has also suffered the loss of spousal consortium.



1 80. Paul has also suffered the following economic damages as a result of the
2 death of his wife Misty in an amount according to proof:

- 3 A. Funeral and burial expenses;
4 B. The value of financial support that Misty would have
5 contributed to the marriage during her life expectancy or the life
6 expectancy of Paul, whichever is shorter;
7 C. The loss of gifts or benefits that Paul would have expected to receive from
8 Misty; and
9 D. The reasonable value of household services that Misty would have
10 provided.

11 81. As a proximate result of each Defendant's acts as set forth above Paul
12 Singh Jr. and Mia Singh suffered the loss of their mother, and their mother's love
13 companionship, comfort, care, assistance, protection, affection, society, moral support,
14 training and guidance.

15 82. Paul Jr. and Mia also suffered the following economic damages as a result
16 of the death of their mother:

- 17 A. The value of financial support that Misty would have
18 contributed to the family during her life expectancy; and
19 B. The loss of gifts or benefits that Paul Jr. and Mia would have expected
20 to receive from Misty.



FOURTH CAUSE OF ACTION

(Battery)

FOR A FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS FOR BATTERY, PLAINTIFFS PAUL SINGH, INDIVIDUALLY AND AS A SUCCESSOR-IN-INTEREST TO DECEDENT MISTY HOLT-SINGH, PAUL SINGH JR., AND MIA SINGH ALLEGE:

83. Plaintiffs refer to each and every one of the above paragraphs, and incorporate those paragraphs as though set forth in full in this cause of action.

84. On July 16, 2014, thirty-two officers fired over 600 bullets at the vehicle, knowing Misty, an innocent hostage, was inside. Misty was used as a human shield against the police bullets that ultimately claimed her life. Of the ten bullets that struck her, every single one was fired by police.

85. Defendants, with reckless and willful disregard of the rights of Misty, intentionally fired multiple rounds into the vehicle, without a clear line of sight, and directly towards Misty.

86. Defendants intended to cause great bodily harm or death to others without their consent, including Misty, by indiscriminately firing 600 bullets into the vehicle where she remained.

87. Misty was an innocent, defenseless hostage. She neither consented nor anticipated she would become a target of the police officer's fire.

88. As a direct and proximate result of each Defendant's acts as set forth above Paul Singh has suffered the loss of his wife Misty and Misty's love, companionship, comfort, care, assistance, protection, affection, society, and moral support. Paul has also suffered the loss of spousal consortium.

89. Paul has also suffered the following economic damages as a result of the death of his wife Misty in an amount according to proof:

A. Funeral and burial expenses;



B. The value of financial support that Misty would have contributed to the marriage during her life expectancy or the life expectancy of Paul, whichever is shorter;

C. The loss of gifts or benefits that Paul would have expected to receive from Misty; and

D. The reasonable value of household services that Misty would have provided.

90. As a proximate result of each Defendant's acts as set forth above Paul Singh Jr. and Mia Sing suffered the loss of their mother, and their mother's love companionship, comfort, care, assistance, protection, affection, society, moral support, training and guidance.

91. Paul Jr. and Mia also suffered the following economic damages as a result of the death of their mother:

A. The value of financial support that Misty would have contributed to the family during her life expectancy; and

B. The loss of gifts or benefits that Paul Jr. and Mia would have expected to receive from Misty.

FIFTH CAUSE OF ACTION

Violations of Misty Holt Singh's Right to Enjoy Civil Rights (Cal. Civ. Code § 52.1)

FOR A FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS, AND DOES 51-100 FOR VIOLATIONS OF CIVIL RIGHTS PURSUANT TO 42 U.S.C. SECTION 1983, PLAINTIFF PAUL SINGH, AS A SUCCESSOR-IN-INTEREST TO DECEDENT MISTY HOLT-SINGH, ALLEGES:

92. Plaintiff, as the successor-in-interest to decedent Misty Holt-Singh, refers to each and every one of the above paragraphs, and incorporate those paragraphs as though set forth in full in this cause of action.



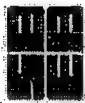
93. The actions of Defendants the City of Stockton, Officer Mark Boling, Officer David Brown, Officer Brad Burrell, Officer George Camacho, Officer Ralph Dominguez, Officer Pancho Freer, Officer Matthew Garlick, Officer Erika Gonzalez, Officer John Griffin, Officer Gabriel Guerrero, Officer David Hiland, Officer Cliff Hoffman, Officer Rodger Holscher, Officer Kevin Knall, Officer Sean Konoske, Officer Patrick Mayer, Officer Kristen McClure, Officer Julio Morales, Officer Ryan Morris, Officer Ryan Rankin, Officer Mike Rodriguez, Officer Ivan Rose, Officer Lance Saur, Officer Michael Serna, Officer Pete Smith, Officer Telly Strika, Officer Jason Underwood, Officer Neto Urias, Officer Samnang Ven, Officer Edward Webb, Officer Drake Wiest, and Officer Ronald Zalunardo and Does 1-50 as well as other officers employed by or acting on behalf of the City of Stockton, was conduct that constituted interference, and attempted interference, by threats, intimidation, coercion, and violence, with Misty Holt Singh's exercise and enjoyment of rights secured by the Constitution and laws of the United States and the State of California, in violation of California Civil Code § 52.1.

94. The actions of Defendants were committed intentionally or with reckless indifference to the safety and health of Misty Holt-Singh, and interfered with, through threats, coercion, intimidation, and violence, her constitutional rights to life, liberty, and to be free from violence, excessive force, and unreasonable searches and seizures.

95. As a proximate result of the actions of Defendants, Misty ultimately lost her life after being struck by ten bullets fired by Defendants—depriving her of multiple constitutional protections and rights safeguarded by the United States and California that were blatantly ignored by the Defendants' intentional, reckless, dangerous, and negligent conduct.

96. As a proximate result of the actions of Defendants, Plaintiff incurred damages to be shown at trial.

97. As a proximate result of the actions of Defendants, Plaintiff was compelled to retain legal counsel to prosecute the violation of Misty Holt-Singh's civil



1 rights, entitling Plaintiff to both attorneys' fees (under Cal. Civ. Code § 52.1(h)) as well
2 as a multiplier for the contingent nature of this representation. (*Chaudhry v. City of Los*
3 *Angeles* (9th Cir. 2014) 751 F.3d 1096, 1111-1112.)

4
5 **PRAYER**

6 WHEREFORE, Plaintiffs pray for damages against Defendants, and each of them
7 (though with specific reference as to the stipulation with the City of Stockton contained
8 in paragraph 49), as follows:

9 **A. As to Plaintiffs Paul Singh, Paul Singh Jr., and Mia Singh, for damages as a**
10 **result of the death of Misty Holt-Singh, plaintiffs pray for judgment against**
11 **the City of Stockton as follows:**

12 1. For all recoverable wrongful death noneconomic damages for loss of love,
13 companionship, comfort, care, assistance, protection, affection, society, and moral
14 support of Misty Holt-Singh, all in an amount to be proven at the time of trial;

15 2. For all recoverable wrongful death economic damages including loss of
16 economic support and loss of household services and loss of gifts and benefits that each
17 Plaintiff would have been expected to receive from Misty Holt-Singh in an amount to be
18 proven at the time of trial;

19 3. For all other general and special damages to the extent permitted by law;

20 4. For prejudgment interest to the extent permitted by law;

21 5. All other damages, penalties, costs, interest, and attorneys' fees as allowed
22 by 42 U.S.C. Section 1983 and 42 U.S.C. Section 1988;

23 6. All other damages, penalties, costs, interest, and attorneys' fees as allowed
24 by Cal. Civ. Code § 52.1, plus a multiplier of any lodestar to compensate for the risk of
25 contingent representation;

26 7. For the pre-death pain and suffering of Misty Holt-Singh, pursuant to the
27 violations of federal law under the successor-in-interest claims under 42 U.S.C. § 1983;

28 8. For costs of suit incurred herein; and



1 9. For such other and further relief as this court may deem just and proper.
2 **B. As to Plaintiffs Paul Singh, Paul Singh Jr., and Mia Singh, for damages as a**
3 **result of the death of Misty Holt-Singh, plaintiffs pray for judgment against**
4 **Officer Mark Boling, Officer David Brown, Officer Brad Burrell, Officer**
5 **George Camacho, Officer Ralph Dominguez, Officer Pancho Freer, Officer**
6 **Matthew Garlick, Officer Erika Gonzalez, Officer John Griffin, Officer**
7 **Gabriel Guerrero, Officer David Hiland, Officer Cliff Hoffman, Officer**
8 **Rodger Holscher, Officer Kevin Knall, Officer Sean Konoske, Officer Patrick**
9 **Mayer, Officer Kristen McClure, Officer Julio Morales, Officer Ryan Morris,**
10 **Officer Ryan Rankin, Officer Mike Rodriguez, Officer Ivan Rose, Officer**
11 **Lance Saur, Officer Michael Serna, Officer Pete Smith, Officer Telly Strika,**
12 **Officer Jason Underwood, Officer Neto Urias, Officer Samnang Ven, Officer**
13 **Edward Webb, Officer Drake Wiest, and Officer Ronald Zalunardo, as follows:**

14 1. For all recoverable wrongful death noneconomic damages for loss of love,
15 companionship, comfort, care, assistance, protection, affection, society, and moral
16 support of Misty Holt-Singh, all in an amount to be proven at the time of trial;

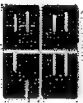
17 2. For all recoverable wrongful death economic damages including loss of
18 economic support and loss of household services and loss of gifts and benefits that each
19 Plaintiff would have been expected to receive from Misty Holt-Singh in an amount to be
20 proven at the time of trial;

21 3. For all other general and special damages to the extent permitted by law;

22 4. For prejudgment interest to the extent permitted by law;

23 5. All other damages, penalties, costs, interest, and attorneys' fees as allowed
24 by 42 U.S.C. Section 1983 and 42 U.S.C. Section 1988;

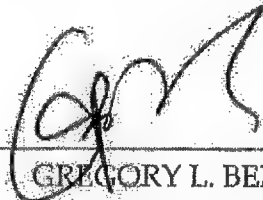
25 6. All other damages, penalties, costs, interest, and attorneys' fees as allowed
26 by Cal. Civ. Code § 52.1, plus a multiplier of any lodestar to compensate for the risk of
27 contingent representation;
28



- 1 7. For the pre-death pain and suffering of Misty Holt-Singh, pursuant to the
2 violations of federal law under the successor-in-interest claims under 42 U.S.C. § 1983;
3 8. For costs of suit incurred herein; and
4 9. For such other and further relief as this court may deem just and proper.

5
6 Dated: April 14, 2016

SHERNOFF BIDART
ECHEVERRIA BENTLEY LLP

7
8
9
10 By: 
11 GREGORY L. BENTLEY
12 MATTHEW W. CLARK
13 CLARE H. LUCICH
14 Attorneys for Plaintiffs

15
16 DEMAND FOR JURY TRIAL

17 Plaintiffs hereby demand a jury trial.

18 Dated: April 14, 2016

19 SHERNOFF BIDART
20 ECHEVERRIA BENTLEY LLP

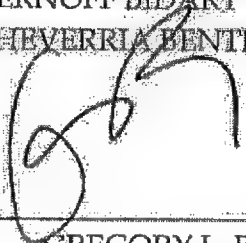
21
22 By: 
23 GREGORY L. BENTLEY
24 MATTHEW W. CLARK
25 CLARE H. LUCICH
26 Attorneys for Plaintiffs
27
28

EXHIBIT A



**SHERNOFF BIDART
ECHEVERRIA BENTLEY**
LAWYERS FOR INSURANCE POLICYHOLDERS

GREGORY L. BENTLEY
GBENTLEY@SHERNOFF.COM

CLAREMONT OFFICE
600 S INDIAN HILL BLVD
CLAREMONT, CA 91711
PHONE: (909) 621-4935
FAX: (909) 625-6916

July 31, 2014

Via Certified & U.S. Mail

Stockton Police Department
Attention: CA Public Records Request
22 E. Market Street,
Stockton, CA 95202

Re: *Family of Misty Holt-Singh*

To Whom It May Concern:

Please be advised that this office represents the family of Misty Holt-Singh concerning her tragic passing on July 16, 2014, during the bank robbery and police chase occurring in Stockton, CA. Pursuant to *California Government Code Section 6251 et al.*, please accept this as a request for information and documentation under the California Public Records Act.

We request the following documents from the Stockton Police Department (referred to herein, including all officers, employees, and agents, as "YOU" or "YOUR") related to the police response to the attempted bank robbery occurring on July 16, 2014 at or around 2:00 p.m. at Bank of the West located on 7810 Thornton Road, Stockton, CA 95207; the subsequent police chase of the suspects/hostages, and the disabling of the vehicle, officer gunfire and deaths of two of the suspects as well as the hostage, Misty Holt-Singh (the entirety of which shall be referred to herein as the "INCIDENT"):

1. The name, address, and telephone number of all other agencies involved in any way with the response to, investigation, resolution, or prosecution of the INCIDENT;
2. The name, address, and telephone number of all witnesses to the INCIDENT;
3. Any and all dispatch logs, whether in audio or written format, as well as any and all memoranda, reports, notes, or other documents concerning the dispatch logs resulting from the INCIDENT;

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July 31, 2014

Page 2

4. Any and all radio logs, radio communications, or other intra-officer communications, whether in audio or written format, as well as any and all memoranda, reports, notes, or other documents concerning the radio communications resulting from the INCIDENT;
5. Any and all communications, telephone calls, reports, or other data submitted to YOU by third parties related to the INCIDENT;
6. Any and all video footage, in whatever format, depicting the INCIDENT, whether taken by YOU or submitted to YOU as part of your investigation;
7. Any and all in-car videos taken by YOU depicting the INCIDENT in any way;
8. Any and all helicopter footage YOU have obtained, regardless of source, depicting the INCIDENT in any way;
9. Any and all media, regardless of source or format, relating to, involving, regarding, depicting, or showing footage of vehicular pursuit involved in the INCIDENT;
10. Any and all photographs, taken as part of your response to, investigation of, or the resolution and prosecution of, the INCIDENT and anything related to the INCIDENT.
11. Any and all documents, including communications, memoranda, reports, notes, or other items, compiled, maintained, constructed, or used by YOU as part of your investigation into the INCIDENT;
12. Any incident reports, accident reports, records of 911 calls, radio calls, service logs, or requests for service from police, fire, or other agencies, regarding the INCIDENT;
13. Any incident reports, accident reports, records of telephone calls, radio calls, service logs, dispatch logs, or requests for service from police, fire, or other agencies, regarding the use of helicopter support in relation to the INCIDENT;



July 31, 2014

Page 3

14. Any incident reports, accident reports, records of telephone calls, radio calls, service logs, dispatch logs, or requests for service from police, fire, or other agencies, regarding the use of helicopter support in relation to vehicular pursuit during the INCIDENT;

15. Any and all documents, logs, incident reports, accident reports, records of radio calls, service logs, or requests for service from other agencies, reflecting, regarding, or referring to the manner, tactics, and method that the officers used to disable the suspect vehicle involved in the INCIDENT;

16. Any and all documents, logs, incident reports, accident reports, records of radio calls, service logs, or requests for service from other agencies, reflecting, regarding, or referring to the decision to disable the suspect vehicle involved in the INCIDENT;

17. Any and all documents, logs, incident reports, accident reports, records of radio calls, service logs, or requests for service from other agencies, reflecting, regarding, or referring to the manner and method in which officers fired into, on, or upon the suspect vehicle involved in the INCIDENT after it had been disabled;

18. Any and all documents, logs, incident reports, accident reports, records of radio calls, service logs, or requests for service from other agencies, reflecting, regarding, or referring to the decision by officers to fire into, on, or upon the suspect vehicle involved in the INCIDENT after it had been disabled;

19. Any and all of YOUR policies, procedures, guidelines, memoranda, notes, presentations, training materials, or other documents regarding the standards for conducting vehicle pursuit by YOUR officers;

20. Any and all of YOUR policies, procedures, guidelines, memoranda, notes, presentations, training materials, or other documents regarding the standards for the number of vehicles permitted to proceed with pursuit when involved in a vehicle pursuit;

21. Any and all of YOUR policies, procedures, guidelines, memoranda, notes, presentations, training materials, or other documents regarding the manner, methods, and tactics used to disable suspect vehicles during a vehicle pursuit;



July 31, 2014

Page 4

22. Any and all of YOUR policies, procedures, guidelines, memoranda, notes, presentations, training materials, or other documents regarding discharge of YOUR officer's weapons on, upon, onto, or into a suspect vehicle while involved in a vehicular pursuit;

23. Any and all of YOUR policies, procedures, guidelines, memoranda, notes, presentations, training materials, or other documents regarding the use of deadly force to disable a suspect's vehicle involved in a vehicular pursuit by YOUR officers;

24. Any and all of YOUR policies, procedures, guidelines, memoranda, notes, presentations, training materials, or other documents regarding the use of deadly force by YOUR officers;

25. Any and all of YOUR policies, procedures, guidelines, memoranda, notes, presentations, training materials, or other documents regarding the use of deadly force by YOUR officers when a civilian is being held hostage by the suspects;

26. A full, complete, and correct copy of any POST training documents, seminars, presentations, memoranda, notes, or other documents utilized by YOUR officers and related to the following topics:

- a) Response to reports of an armed robbery in progress
- b) Vehicular pursuit
- c) Vehicular pursuit of armed suspects
- d) Disabling of suspect vehicles involved in vehicular pursuits
- e) Coordination with, and necessity of, helicopter support
- f) Use of deadly force
- g) Situations where hostages at risk
- h) Use of deadly force where hostages in the line of fire
- i) Priority of life decisions where hostages involved

27. Any and all incident reports, police blotter, notices to newspapers, accident reports, 911 calls, service logs, radio calls, or requests for service from fire, police, or other agencies regarding attempted, in progress, or completed burglaries, robberies, or other



July 31, 2014

Page 5

violent crimes occurring at the Bank of the West branch located at 7810 Thornton Road, Stockton, CA 95207 for the time period of January 1, 2008 to the present;

28. Any and all incident reports, police blotter, notices to newspapers, accident reports, 911 calls, service logs, radio calls, or requests for service from fire, police, or other agencies regarding the attempted, in progress, or completed burglary occurring at the Bank of the West branch located at 7810 Thornton Road, Stockton, CA 95207 on February 24, 2012;

29. Any and all incident reports, police blotter, notices to newspapers, accident reports, 911 calls, service logs, radio calls, or requests for service from fire, police, or other agencies regarding the attempted, in progress, or completed burglary occurring at the Bank of the West branch located at 7810 Thornton Road, Stockton, CA 95207 on April 10, 2012;

30. Any and all incident reports, police blotter, notices to newspapers, accident reports, 911 calls, service logs, radio calls, or requests for service from fire, police, or other agencies regarding the attempted, in progress, or completed burglary occurring at the Bank of the West branch located at 7810 Thornton Road, Stockton, CA 95207 on April 25, 2012;

31. Any and all incident reports, police blotter, notices to newspapers, accident reports, 911 calls, service logs, radio calls, or requests for service from fire, police, or other agencies regarding the attempted, in progress, or completed burglary occurring at the Bank of the West branch located at 7810 Thornton Road, Stockton, CA 95207 on August 30, 2012;

32. Any and all incident reports, police blotter, notices to newspapers, accident reports, 911 calls, service logs, radio calls, or requests for service from fire, police, or other agencies regarding the attempted, in progress, or completed burglary occurring at the Bank of the West branch located at 7810 Thornton Road, Stockton, CA 95207 on January 31, 2014;



July 31, 2014

Page 6

33. Any and all incident reports, police blotter, notices to newspapers, accident reports, 911 calls, service logs, radio calls, or requests for service from fire, police, or other agencies regarding the attempted, in progress, or completed burglary occurring at the Bank of the West branch located at 7810 Thornton Road, Stockton, CA 95207 on July 16, 2014;

34. List of all prior public records requests relating to this INCIDENT; and

35. List of all prior public records requests relating to, regarding, or concerning the following topics for the time period of January 1, 2000 to the present:

- a) Response to reports of an armed robbery in progress
- b) Vehicular pursuit
- c) Vehicular pursuit of armed suspects
- d) Disabling of suspect vehicles involved in vehicular pursuits
- e) Coordination with, and necessity of, helicopter support
- f) Use of deadly force
- g) Situations where hostages at risk
- h) Use of deadly force where hostages in the line of fire
- i) Priority of life decisions where hostages involved

Please provide our office with a determination on this request within 10 days of your receipt.

If you determine that any or all of the information qualifies for an exemption from disclosure, please explain if the exemption is discretionary, and the specific reasons why you have chosen to exercise your discretion to withhold the information.

If you determine that some, but not all of the information is exempt from disclosure and that you intend to withhold it, I ask that you redact it for the time being and make the rest available as requested.

If you determine that any or all of the information is exempt and will not be disclosed, please cite the specific legal authorities.

If I can provide any clarification or modifications that will help expedite your attention to our request, please contact me at (909) 621-4935 or via email at gbentley@shernoff.com. Please also note that we are willing to pay all reasonable costs associated with this request.



July 31, 2014
Page 7

Thank you for your time and attention to this matter.

Very Truly Yours,

SHERNOFF BIDART
ECHEVERRIA BENTLEY LLP


GREGORY L. BENTLEY

CERTIFIED MAIL



7014 0510 0000 2708 2519
7014 0510 0000 2708 2519

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com

Postage	Signature	Address

Stockton Police Dept.
22 E. Market St.
Stockton, CA 95202



**SHERNOFF BIDART
ECHEVERRIA BENTLEY**
LAWYERS FOR INSURANCE POLICYHOLDERS

600 S. INDIAN HILL BLVD. CLAREMONT, CA 91711

Stockton Police Department
Attention: CA Public Records Request
22 E. Market Street,
Stockton, CA 95202

MAILED
27 JUL 2011
DEFENSE
\$07.40

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the label so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.
- 1. Article addressed to:
**Stockton Police Dept.
Attn: CA Public Records**

COMPLETE THIS SECTION ON DELIVERY:

A. Signature	<input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee
B. Received by (Printed Name)	C. Date of Delivery
D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Stockton Police Dept.
Attn: CA Public Records
22 E. Market Street
Stockton, CA 95202

2. Article Number

(Transfer from service label)

7014 0510 000

PS Form 3811, July 2013

Domestic Return Rec

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Carolyn Hester*☐ Agent☐ Addressee

B. Received by (Printed Name)

Carolyn Hester

C. Date of Delivery

8-7-14

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

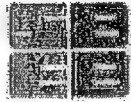
☒ Certified Mail®☐ Priority Mail Express™☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ Collect on Delivery

4. Restricted Delivery? (Extra Fee)

☐ Yes

EXHIBIT B

GREGORY L. BENTLEY
GBENTLEY@SHERNOFF.COM



SHERNOFF BIDART
ECHEVERRIA BENTLEY
LAWYERS FOR INSURANCE POLICYHOLDERS

CLAREMONT OFFICE
600 S. INDIAN HILL BLVD
CLAREMONT, CA 91711
PHONE: (909) 621-4938
FAX: (909) 625-6916

July 31, 2014

Via Certified & U.S. Mail

Chief Eric Jones
Stockton Police Department
22 E. Market Street,
Stockton, CA 95202

Re: Family of Misty Holt-Singh

Dear Chief Jones:

Thank you for meeting with Paul Singh and me to discuss the tragic events of July 16, 2014 that resulted in the death of Misty Holt-Singh. We appreciate your willingness to keep us updated regarding the investigation.

By now, you have probably received a copy of the Public Records Request served on the Stockton Police Department. We look forward to receiving the documents requested as we continue this full, fair, transparent, and thorough investigation.

The purpose of this letter is to informally request a copy of the autopsy report, the coroner's report, the ballistics report, photographs and video footage of Misty Holt-Singh, and any other reports investigating, determining, reviewing, or inquiring into the cause of her death. We intentionally did not include these requests as part of our Public Records Request because the family would prefer to keep the reports private.

We look forward to your cooperation with this informal request.

Sincerely,

SHERNOFF BIDART
ECHEVERRIA BENTLEY LLP



GREGORY L. BENTLEY

WWW.SHERNOFF.COM

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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Chief Eric Jones
Stockton P.D.
22 E. Market Street
Stockton CA 95202

2. Article Number

(Transfer from service label)

7013

PS Form 3811, February 2004

Dom

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x Charles Harkin

☐ Agent

☐ Addressee

B. Received by (Print Name)

Charles Harkin

C. Date of Delivery

8-14

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes



EXHIBIT C



CITY OF STOCKTON
OFFICE OF THE CITY ATTORNEY
CITY HALL
425 NORTH EL DORADO STREET
STOCKTON, CA 95202-1997
TELEPHONE (209) 937-8333
FACSIMILE (209) 937-8898

August 13, 2014

Gregory L. Bentley, Esq.
Shernoff Bidart Echeverria Bentley LLP
600 S. Indian Hill Blvd.
Claremont, CA 91711

RE: PUBLIC RECORDS ACT REQUEST OF JULY 31, 2014

This office is in receipt of your request dated July 31, 2014, received August 4, 2014, for public records pursuant to the Public Records Act ("Act") (Gov. Code § 6250, et seq.). A search has been initiated to respond to the request.

In order to search for, collect, and appropriately examine a voluminous amount of separate and distinct records, the City is extending the time to respond by 14 days as authorized by Section 6253, subdivision (c) of the Government Code.

If you have any questions or wish to discuss the matter, please contact the undersigned at (209) 937-8333.

JOHN M. LUEBBERKE
CITY ATTORNEY

BY


NEAL C. LUTTERMAN
DEPUTY CITY ATTORNEY

NCL:bb

EXHIBIT D



CITY OF STOCKTON
OFFICE OF THE CITY ATTORNEY
CITY HALL
426 NORTH EL DORADO STREET
STOCKTON, CA 95202-1987
TELEPHONE (209) 937-8333
FACSIMILE (209) 937-8898

September 11, 2014

Gregory L. Bentley, Esq.
Shernoff Bidart Echeverria Bentley LLP
600 S. Indian Hill Blvd.
Claremont, CA 91711

RE: PUBLIC RECORDS ACT REQUEST OF JULY 31, 2014

Enclosed please find four (4) DVDs which contain the documents, audio recordings, and computerized MDC data identified as responsive to your California Public Records Act (PRA) request in my letter to you dated August 28, 2014. I have also included hard copies of the all other PRA requests received by the City to date relating to the July 16, 2014 incident at Bank of the West and its aftermath.

Also, pursuant to our discussion earlier today, I have enclosed photocopies of the videos Stockton Police Department used in the training of its officers entitled "Surviving Deadly Assaults" and "Tactical Communications" which DVDs are produced by POST. As I explained, these DVDs are copy protected. Our copy service was unable to make duplicates of the videos due to the discs being electronically encrypted to preclude duplication of them. I have enclosed the copies of the discs themselves to assist in your being able to procure them through alternate channels; perhaps you might follow up directly with POST to obtain copies.

As I mentioned during our conversation, I will be forwarding shortly under separate cover copies of the various police reports relating to the prior robberies of the Bank of the West branch at issue in this matter. Once those reports are redacted of all confidential information, I will forward the redacted copies to you. I am also working on solving the technological issues attendant to producing the 911 call traffic. As I explained, there are interspersed among the calls that can be disclosed, calls which relate to confidential eyewitness reports, crime tips, and other confidential matters which cannot be disclosed. I will keep you informed of our progress and will get the disclosable data to you as soon as practicable.

Gregory L. Bentley
Shernoff Bidart Echeverria Bentley LLP
September 11, 2014
Page 2

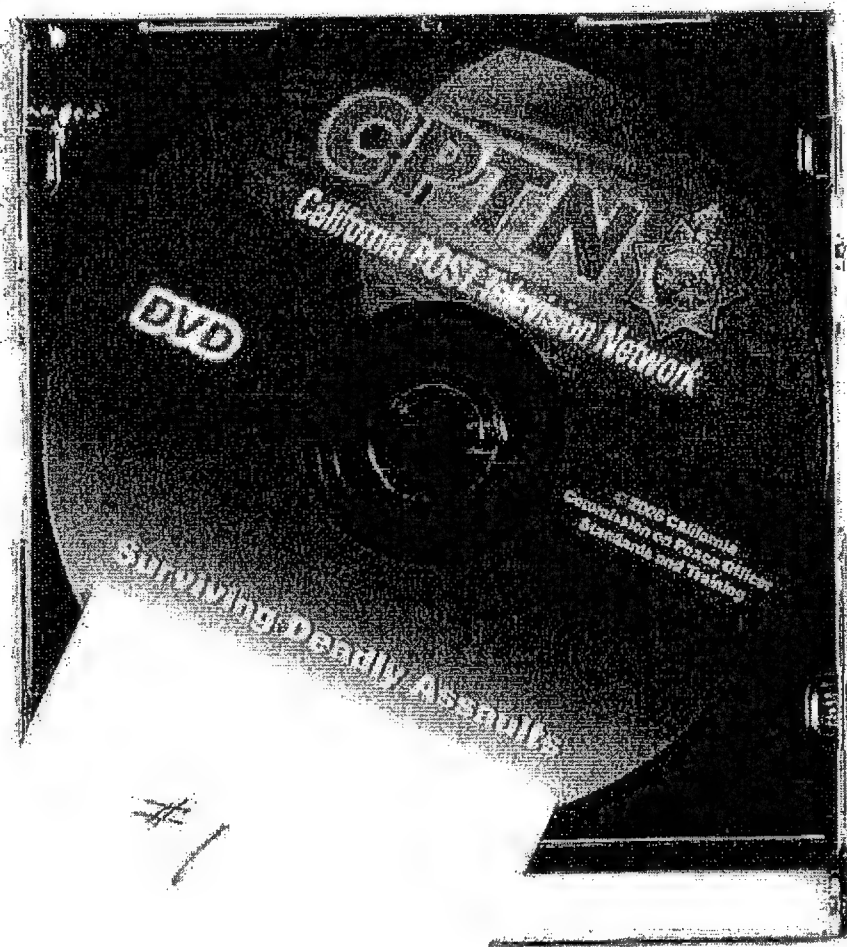
Thank you for your ongoing patience and cooperation. If you have any questions, please feel free to call.

JOHN M. LUEBBERKE
CITY ATTORNEY

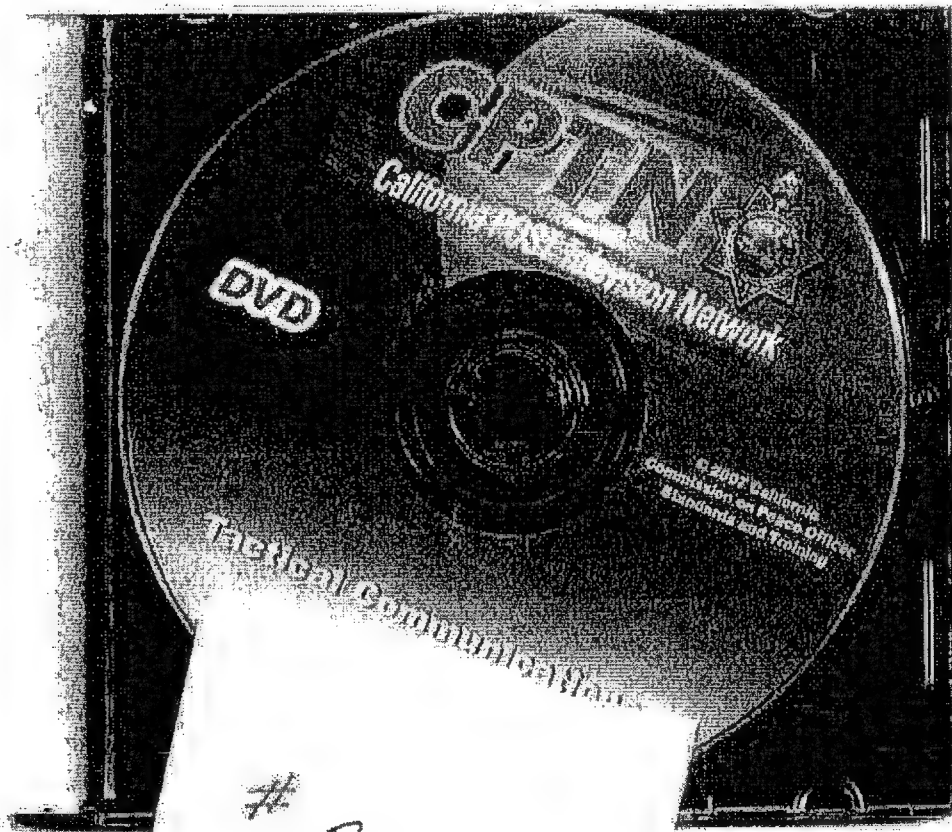
BY 

NEAL C. BUTTERMAN
DEPUTY CITY ATTORNEY

NCL:bb
Enc.



Copyright



Copyright

AP

ASSOCIATED PRESS

ASSOCIATED PRESS

440 N. 1st St.
San Jose, CA 95131
408.281.2000

July 18, 2014

Stockton Police Department
Main Police Station
22 E. Market Street
Stockton, CA 95202

Please Respond To:

Martha Mendoza
624 Cayuga St
Santa Cruz CA 95062
mmendoza@ap.org

To Whom It May Concern,

Under the California Public Records Act (Govt. Code 6250-6270) I am requesting all 911 audio recordings and all dispatch printouts related to the Wednesday, July 16, 2014 Bank of the West robbery in Stockton and the subsequent chase and gun battle.

I ask for a determination on this request within 10 days of your receipt of it, and an even prompter reply if you can make that determination without having to review the record[s] in question.

911 calls fall under the California Public Records Act, which makes all records available to the public through request.

If you determine that any or all of the information qualifies for an exemption from disclosure, I ask you to note whether, as is normally the case under the Act, the exemption is discretionary, and if so whether it is necessary in this case to exercise your discretion to withhold the information.

If you determine that some but not all of the information is exempt from disclosure and that you intend to withhold it, I ask that you redact it for the time being and make the rest available as requested. In any event, please provide a signed notification citing the legal authorities on which you rely if you determine that any or all of the information is exempt and will not be disclosed.

If I can provide any clarification that will help expedite your attention to my request, please contact me at 831-240-5495 or mmendoza@ap.org. I ask that you notify me of any duplication costs exceeding \$100. I would appreciate a digitized response.

Thank you for your time and attention to this matter.

Sincerely,

Martha Mendoza

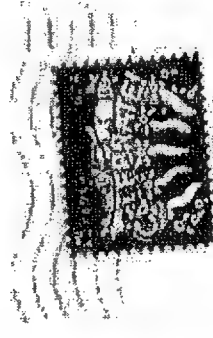
RECEIVED

JUL 21 2014

San Jose, CA
408.281.2000

AP Associated Press
624 Cayuga Street
Santa Cruz, CA 95062

SAN JOSE CA 950
US JUL 2014 FINE L



Stockton PO
Main Police Station
22 E Market St
Stockton CA 95202

95202287533

95202287533

Connie Cochran - Fwd: CBS13 KOVR public records request

From: Joseph Silva <joseph.silva@stocktongov.com>
To: Connie.Cochran@stocktongov.com, Teresa.Alvarez@stocktongov.com, Trevor.W...
Date: 7/31/2014 12:31 PM
Subject: Fwd: CBS13 KOVR public records request

FYI,

Joey

Sent from my iPhone

Begin forwarded message:

From: "Martinez, Leigh A" <lmartinez@kvr.com>
Date: July 31, 2014 at 11:50:41 AM PDT
To: "Joseph Silva" <joseph.silva@stocktongov.com>
Subject: CBS13 KOVR public records request

Office of the District Attorney of San Joaquin County & Stockton Police Department:

CBS13 KOVR-TV is submitting a public records request for the 911 calls, police radio calls, and incident reports from the July 16, 2014 incident involving the Bank of the West robbery on Thornton Avenue, the police pursuit of the suspects, and the shootouts with the suspects that ended in the death of two suspects and hostage Misty Holt-Singh.

We would like these materials as they become available for the public.

Thank you for your assistance.

Leigh Martinez
CBS13 KOVR-TV
San Joaquin Valley Reporter
(916) 416-0295
lmartinez@kvr.com

Connie Cochran - RE: CNN's New Day: Request for Dashcam

From: "Foster, Tekella" <Tekella.Foster@turner.com>
To: Connie Cochran <Connie.Cochran@stocktongov.com>
Date: 7/20/2014 10:04 AM
Subject: RE: CNN's New Day: Request for Dashcam

Thank you.

From: Connie Cochran [mailto:Connie.Cochran@stocktongov.com]
Sent: Thursday, July 17, 2014 8:04 PM
To: Foster, Tekella
Subject: RE: CNN's New Day: Request for Dashcam

Stockton Police Department vehicles are not equipped with dashcams. Requests for video are subject to the California Public Record Act, Government Code 6250, which does provide for certain exemptions. We will make a determination and respond to your request within 10 days.

Connie Cochran, Public Information Officer
City Manager's Office
City of Stockton
425 N. El Dorado Street
Stockton, CA 95202
Connie.Cochran@stocktongov.com
(209) 937-8827 Office
(209) 629-1251 Cell

Visit the City of Stockton web site at www.cityofstockton.gov
>>> "Foster, Tekella" <Tekella.Foster@turner.com> 7/17/2014 5:02 PM >>>
Thank you.

From: Connie Cochran [mailto:Connie.Cochran@stocktongov.com]
Sent: Thursday, July 17, 2014 1:50 PM
To: Foster, Tekella
Subject: Re: CNN's New Day: Request for Dashcam

I'm checking to see what is available and in what time frame.

Connie Cochran, Public Information Officer
City Manager's Office
City of Stockton
425 N. El Dorado Street
Stockton, CA 95202
Connie.Cochran@stocktongov.com
(209) 937-8827 Office
(209) 629-1251 Cell

Visit the City of Stockton web site at www.cityofstockton.gov
>>> "Foster, Tekella" <Tekella.Foster@turner.com> 7/17/2014 9:32 AM >>>
Dear Ms. Cochran,

Hope you're well. I work as a Producer on CNN's morning show, *New Day* with Chris Cuomo and Kate Bolduan.
[http://www.cnn.com/](http://www.cnn.com)

Stockton Police PIO suggested I reach out to you. We would like to request a copy of the dash cam video of the bank robbery police chase. Here's the story:
STORY: 3 dead in Stockton gunbattle after bank robbery, police chase
<http://www.cnn.com/2014/07/16/stockton-shooting/index.html>

New Day airs M-F between the hours of 6-9amET. We'd like to air this tomorrow, Friday, July 18th if possible. If you could send the dash cam video today or before 6pmET, that would be ideal.

Please let me know if you have any questions in the meantime.

Thank you so very much for your time and consideration.

Sincerely,

Tekella

Tekella Taylor | 6:58 New Day | 4 New Women | New York, NY 10019 | D +1 212-275-7850 M +1 347-434-2599 | F +1 212-275-9526 | tekella.taylor@turner.com



WEEKDAY
MORNINGS
6-9ET



#NewDay NewDayCNN.com

Connle Cochran - FW: Media request -- 911 calls

From: "Diaz, Monika" <Monika.Diaz@fox40.com>
To: "joseph.silva@stocktongov.com" <joseph.silva@stocktongov.com>
Date: 7/22/2014 2:05 PM
Subject: FW: Media request -- 911 calls

FYI, here's my request again. I understand that you told Tia Ewing that we did not submit a request for 911 calls.

Just wanted to make sure you got my request which was sent on Thursday.

Monika

From: Diaz, Monika
Sent: Thursday, July 17, 2014 12:16 PM
To: 'joseph.silva@stocktongov.com'
Cc: Tapia, Cristian
Subject: Media request -- 911 calls

7/17/2014

Officer Joseph Silva
Stockton Police Department

RE: Public Act Request

Under the California Public Records Act, I ask for a copy of the following:

911 calls (audio) of the robbery at Bank Of The West in Stockton that occurred on 7/16/2014. The bank is located on 7810 Thornton Road.

I ask for a determination on this request within 10 days of your receipt.

If there are any questions, please email or call my cell.

Thanks,

Monika Diaz
FOX40
Managing Editor
916-454-4548 desk
214-505-1785 cell
Monika.Diaz@FOX40.com

The Jacot Law Firm

Lance Gabriel Jacot
Attorney at Law

11 S. San Joaquin Street, Suite 403
Stockton, CA 95202
Phone: (209) 463-1800
Fax: (209) 463-1811

Toll Free: (866) 572-2084
Email: L.Jacot@jacotlawfirm.com
www.jacotlawfirm.com
www.Stocktondefender.com

August 13, 2014

RECEIPT OF A COPY OF THIS DOCUMENT IS HEREBY ACKNOWLEDGED:

By: 

Date: 8-14-14

Case: People v. Jaime Ramos (SF128796A)

Custodian of Records
Stockton Police Department
22 E. Market Street
Stockton, CA 95202

To Whom it May Concern,

I am one of the the attorneys representing Jaime Ramos in case SF128796A. Mr. Jonathan Fattarsi of the San Joaquin County Public Defenders office is the other attorney. Mr. Ramos is facing numerous charges that make him eligible for the death penalty. These charges arise from a bank robbery that occurred on July 16, 2014, at the Bank of the West, the subsequent hostage taking and pursuit, and the deaths of Misty Holt-Singh, Alex Martinez, and Gilbert Renteria.

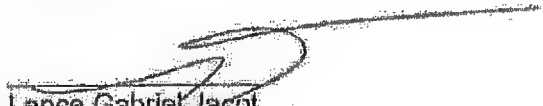
I am requesting that you preserve the following items:

1. Any audio of 9-1-1 calls concerning this incident, including any possibly related "suspicious" incidents in the two hours proceeding the first 9-1-1 calls for the PC 211 that may have mentioned any suspect, vehicle or vicinity.
2. Any and all police radio traffic including primary, tactical, interagency and car to car frequencies.
3. All mobile digital text messaging.
4. All in car or body video.
5. All cell phone numbers in the possession of any police officer whether publicly owned or personal, as well as all text messages, video, or photographs from those phones.

In addition to the above requested items I am requesting the protocols, manuals, teaching materials, printed policies and procedures for the following:

1. Use of deadly force,
2. Kidnappings.
3. Pursuits.

Sincerely ,



Lance Gabriel Jacot
Attorney at Law

CC: Jonathan Fattarsi- San Joaquin County Public Defender's Office
CC: Mark Ott- San Joaquin County District Attorney's Office

The Jacot Law Firm

Lance Gabriel Jacot
Attorney at Law

11 S. San Joaquin Street, Suite 403
Stockton, CA 95202
Phone: (209) 463-1800
Fax: (209) 463-1811

Toll Free: (866) 572-2084
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www.jacotlawfirm.com
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Custodian of Records
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To Whom it May Concern,

I am one of the the attorneys representing Jaime Ramos in case SF128796A. Mr. Jonathan Fattarsi of the San Joaquin County Public Defenders office is the other attorney. Mr. Ramos is facing numerous charges that make him eligible for the death penalty. These charges arise from a bank robbery that occurred on July 16, 2014, at the Bank of the West, the subsequent hostage taking and pursuit, and the deaths of Misty Holt-Singh, Alex Martinez, and Gilbert Renteria.

Pursuant to my rights under the California Public Records Act (Government Code Section 6250 et seq.), I ask to obtain a copy of the following, which I understand to be held by your agency:

I am requesting the protocols, manuals, teaching materials, printed policies and procedures for the following:

1. Use of deadly force.
2. Kidnappings.
3. Hostage Situations.
4. Pursuits.

I ask for a determination on this request within 10 days of your receipt of it, and an even prompter reply if you can make that determination without having to review the record[s] in question.

If you determine that any or all of the information qualifies for an exemption from disclosure, I ask you to note whether, as is normally the case under the Act, the exemption is discretionary, and if so whether it is necessary in this case to exercise your discretion to withhold the information.

If you determine that some but not all of the information is exempt from disclosure and that you intend to withhold it, I ask that you redact it for the time being and make the rest available as requested.

In any event, please provide a signed notification citing the legal authorities on which you rely if you determine that any or all of the information is exempt and will not be disclosed.

If I can provide any clarification that will help expedite your attention to my request, please contact me.

I am sending a copy of this letter to your legal advisor to help encourage a speedy determination, and I would likewise be happy to discuss my request with [him/her] at any time.

Thank you for your time and attention to this matter.

Sincerely ,



Lance Gabriel Jacob
Attorney at Law

CC: Jonathan Fattarsi- San Joaquin County Public Defender's Office
CC: Mark Ott- San Joaquin County District Attorney's Office



CITY OF STOCKTON
OFFICE OF THE CITY ATTORNEY
CITY HALL
425 NORTH EL DORADO STREET
STOCKTON, CA 95202-1987
TELEPHONE (209) 937-8333
FACSIMILE (209) 937-8898

September 24, 2014

Gregory L. Bentley, Esq.
Shernoff Bidart Echeverria Bentley LLP
600 S. Indian Hill Blvd.
Claremont, CA 91711

RE: PUBLIC RECORDS ACT REQUEST OF JULY 31, 2014

As further response to your California Public Records Act (PRA) request, and as indicated in my correspondence to you dated September 11, 2014, enclosed please find one (1) CD which contains various police reports relating to the prior robberies of the Bank of the West branch at issue in this matter. Said police reports have been redacted and are detailed below:

1. Report No. 09-6085 / Incident Date: 02/05/2009
2. Report No. 12-6387 / Incident Date: 02/24/2012
3. Report No. 12-12262 / Incident Date: 04/10/2012
4. Report No. 12-14222 / Incident Date: 04/25/2012
5. Report No. 12-28915 / Incident Date: 08/18/2012
6. Report No. 12-30512 / Incident Date: 08/30/2012
7. Report No. 14-4198 / Incident Date: 01/31/2014

Please note that these reports are provided subject to the Confidentiality Agreement in place in this matter. If you have any questions regarding this information, please feel free to call.

Thank you.

JOHN M. LUEBBERKE
CITY ATTORNEY

BY 

NEAL C. LUTTERMAN
DEPUTY CITY ATTORNEY

NCL:bb
Enc.

EXHIBIT E

TOLLING AGREEMENT

The parties to this agreement are Paul Singh, Paul Singh, Jr., and Mia Singh, by and through her Guardian ad Litem, Paul Singh, (collectively, the "Singh Family") and the City of Stockton, on its own behalf and on behalf of its departments, including, but not limited to, the Stockton Police Department (collectively, "the City"). The Singh Family and the City will collectively be referred to in this agreement as the "PARTIES".

RECITALS

On July 16, 2014, Misty Holt-Singh, the wife of Paul Singh, and the mother of Paul Singh, Jr. and Mia Singh, was a customer visiting the Bank of the West branch located in Stockton, California. During the course of that visit, she was taken hostage by three armed individuals, who then fled the bank branch with Misty and two other hostages.

After an extensive police chase, the fleeing vehicle was finally disabled. During an exchange of gunfire between the suspects and police, Misty was struck numerous times and would succumb to her injuries. The entirety of the events occurring on July 16, 2014, including Misty Holt-Singh's tragic passing, will be referred to herein as the "Incident."

AGREEMENT

The Parties have agreed to toll any and all applicable statute of limitations or time requirements for presenting a claim to a public entity that may apply to any and all claims the Singh Family may have against the City including, but not limited to, wrongful death, negligence, or 42 U.S.C. § 1983 causes of action for the City's alleged role in the Incident, for a period of three (3) months, from January 16, 2015 to April 16, 2015. This Agreement is also specifically intended to toll the time for presenting a claim for personal injury or death contained in California Government Code § 911.2, from January 16, 2015 to April 16, 2015.

So long as a claim pursuant to Government Code § 910 is presented to the City on or before April 16, 2015, it will be considered timely under § 911.2, and the City shall not avail itself of the provisions in Government Code § 911.3 (return of a late claim without further action).

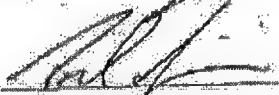
IT IS SO AGREED:


PAUL SINGH

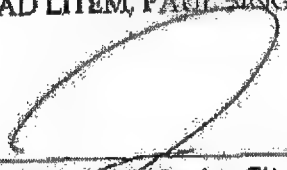
1/7/15
DATE


PAUL SINGH, JR.

1/7/15
DATE



MIA SINGH, BY AND THROUGH
HER PARENT AND GUARDIAN
AD LITEM, PAUL SINGH

1/7/15
DATE



John M. Luebberke, City Attorney
CITY OF STOCKTON

1-5-15
DATE

APPROVED AS TO FORM:


Gregory L. Bentley, Esq.
SHERNOFF BIDART ECHEVERRIA BENTLEY LLP
Attorneys for the Singh Family

DATE


John M. Luebberke, City Attorney
Neal C. Lutterman, Deputy City Attorney
Office of the City Attorney
Attorneys for City of Stockton

1-5-15
DATE

EXHIBIT F

Angelo
Kilday
Kilduff

601 University Avenue, Suite 150
Sacramento, CA 95825
Telephone No. (916) 564-6100
Telecopier No. (916) 564-6263
E-Mail: bkilday@nkk-law.com

Bruce A. Kilday*
Carolee G. Kilduff*
Cori R. Sano

John A. Whitesides
Carrie A. Frederickson
Amie McTavish
Sorena M. Warner
Kevin J. Dehoff

*Member of American Board
of Trial Advocates (ABOTA)

January 30, 2015

Greg L. Bentley
(via email: gbentley@shernoff.com)
SHERNOFF, BIDART, ECHEVERRIA, BENTLEY
600 S. Indian Hill Blvd.
Claremont, CA 91711

Hon. John K. Trotter (Ret.)
(via email c/o: TLunneford@JAMSADR.com)
500 N. State College Blvd., 14th Floor
Orange, CA 92868

Re: Holt-Singh v. City of Stockton

Dear Greg & Justice Trotter,

As explained in my last letter, the City of Stockton and CJPRMA have been working to resolve the bankruptcy questions that were so troublesome at the recent mediation. Representatives of the City and the Pool have worked to reach this tentative understanding of the impact of the bankruptcy on this litigation:

A. For purposes of settlement discussions, the City of Stockton has tendered its \$1,000,000 SIR to CJPRMA. Thus, CJPRMA is handling future negotiations.

B. If this claim goes to litigation, then the bankruptcy formula would apply to the entire SIR, with CJPRMA being responsible for a judgment in excess of \$1,000,000, up to a total of \$39,000,000. (The First Amended Plan for the Adjustment of Debts is attached for your review.)

Re: Holt-Singh v. City of Stockton
Page 2
January 30, 2015

We hope to be able to resume discussions with you and look forward to your response.

ANGELO, KILDAY & KILDAY, LLP


By: BRUCE A. KILDAY

cc: Ted Wood, Stockton Deputy City Attorney (ted.wood@stocktongov.com)
Susana Wood, Stockton Deputy City Attorney (Susana.wood@stocktongov.com)
Neal Lutterman, Stockton City Attorney's Office (neal.lutterman@stocktongov.com)
David Clovis, CJPRMA (david@cjprma.org)
Craig Schweihard, CJPRMA (craig@cjprma.org)
A. Byrne Conley, Gibbons & Conley (abcjr@gibbons-conley.com)

Enclosure: First Amended Plan
Ringler Proposal for Singh Children

EXHIBIT G

CLAIM FOR DAMAGES

CITY OF STOCKTON

Note: Claims for bodily injury or death, damage to personal property, or damage to growing crops may be filed on this form, not later than six months after the occurrence out of which the claims arose. All other claims must be filed not later than one year after the occurrence out of which the claims arose. (Refer to California Government Code sections 910.4 and 911.2)

DIRECTION: The original claim must be filed with the City of Stockton City Clerk's Office, 425 North El Dorado Street, Stockton, California 95202. Retain the yellow copy for your records.

NAME OF CLAIMANT: Singh, Paul; Singh Jr., Paul; Singh, Mia; Estate of Misty Holt-Singh Date of Birth 6/13/69; 3/26/96; 12/5/01
(Last) (First) (Middle)
HOME ADDRESS/PHONE: 600 South Indian Hill Blvd. Claremont, CA 91711 (909) 621-4935
(Number/Street) (City/State/Zip Code) (Phone Number)
BUSINESS ADDRESS/PHONE: 600 South Indian Hill Blvd. Claremont, CA 91711 (909) 621-4935
(Number/Street) (City/State/Zip Code) (Phone Number)

DIRECTION: Indicate to which address you wish notice sent ☒ HOME ☐ BUSINESS
WHEN DID INJURY OR DAMAGE OCCUR? July 16, 2014 Wednesday See Addendum to claim attached hereto
(Month/Day/Year) (Day of Week) (Time of Day)
WHERE DID INJURY OR DAMAGE OCCUR? See Addendum to claim attached hereto.
(Street address, intersecting streets, or other location)

HOW DID INJURY OR DAMAGE OCCUR?
(Describe accident or occurrence in complete detail)
See Addendum to claim attached hereto.

NAME OF CITY EMPLOYEE(S) INVOLVED? See Addendum to claim attached hereto.

WHAT ACTION OR INACTION OF CITY EMPLOYEE(S) CAUSED YOUR INJURY OR DAMAGES?
See Addendum to claim attached hereto.

WHAT INJURIES OR DAMAGES DID YOU SUFFER?
See Addendum to claim attached hereto.

TOTAL AMOUNT CLAIMED: ☒ Unlimited case—over \$25,000.00 ☐ Limited case—\$25,000.00 or less

If under \$10,000.00, please specify amount \$

DIRECTION: Sign and date this Claim For Damages below. If the signer is not the claimant, indicate the relationship of the signer to the claimant.

(Signature) 2/4/15 (Month/Day/Year) (Social Security Number-Optional)
Attorney for Claimants Paul Singh, Paul Singh Jr., Mia Singh, and the Estate of Misty Holt-Singh
(Relationship of signer, if not claimant)

DIRECTION: You may attach and include with this completed form any bills for medical treatment and expenses, and any estimates or bills for personal property damage. Questions may be referred to (209) 937-8807

NOTE: PRESENTATION OF A FALSE CLAIM IS A FELONY (Refer to California Penal Code Section 72)



1 Gregory L. Bentley (State Bar No. 151147)

2 **SHERNOFF BIDART**

3 **ECHEVERRIA BENTLEY LLP**

4 600 S. Indian Hill Blvd.

5 Claremont, California 91711

6 Telephone: (909) 621-4935

7 Facsimile: (909) 625-6915

8 Email: gbentley@shernoff.com

9 Attorneys for Claimants

10 **GOVERNMENTAL CLAIM AGAINST THE CITY OF STOCKTON**

11 (CALIFORNIA GOVERNMENT CODE SECTION 910)

12 Paul Singh, Paul Singh, Jr. (19), and Mia Singh (13), on behalf of themselves and
13 the Estate of Misty Holt-Singh, by and through their attorneys acting on their behalf,
14 present a claim for damages against the City of Stockton (the City) pursuant to
15 California Government Code Section 910.

16 **1. Name And Address Of The Claimants:**

17 c/o Gregory L. Bentley

18 **SHERNOFF BIDART ECHEVERRIA BENTLEY LLP**

19 600 S. Indian Hill Blvd.

20 Claremont, CA 91711

21 (909) 621-4935/ FAX (909) 625-6915

22 **2. Address Where Notices Are To Be Sent:**

23 **SHERNOFF BIDART ECHEVERRIA BENTLEY LLP**

24 c/o Gregory L. Bentley

25 600 S. Indian Hill Blvd.

26 Claremont, CA 91711

27 (909) 621-4935/FAX (909) 625-6915



1 3. The date, place, and other circumstances giving rise to the claim asserted

2 A. When, where, and how the death of Misty Holt-Singh occurred.

3 On July 16, 2014, between 2:00 p.m. and 3:30 p.m., the City of Stockton Police
4 Department contributed to the death of wife and mother-of-two Misty Holt-Singh by:
5 (1) Stockton officers improperly responded to a bank robbery in progress, greatly
6 exacerbating the situation (where officers parked police vehicles in full view of the
7 perpetrators, causing them to grab additional hostages); (2) Stockton officers then
8 engaged in an hour-long, rolling gun battle with the bank robbers through populated
9 city streets; and (3) thirty-four Stockton officers ultimately fired over 600 bullets into the
10 perpetrators' disabled vehicle without command, knowing a hostage was inside. Ten of
11 those bullets—all fired from *police weapons* without command and without regard for
12 the hostage—struck hostage Misty Holt-Singh, causing her death.

13 On July 16, 2014, Misty was visiting the Bank of the West branch on Thornton
14 Road in Stockton, California. Unbeknownst to her, this branch had been a frequent
15 robbery target, suffering multiple robberies in a short two year span, enough that the
16 branch was scheduled to close just days later. On July 16, 2014, at approximately 2:09
17 p.m., three armed gunmen—two of whom had robbed the *same branch* seven months
18 earlier and were well known members of the Norteno Street Gangs, North Central
19 Stockton¹—forced Misty and others back inside the bank, where the gunmen jumped
20 the teller counter, controlled the bank, and proceeded with the robbery.

21 The first responding law enforcement personnel were from Stockton Police
22 Department. Contrary to established procedures, the Stockton Police arrived at the bank
23 branch in full view of the perpetrators. This caused them to retreat back into the bank,
24 grab additional hostages (including Misty), and take off in the bank manager's vehicle.

25 An hour-long, high-speed pursuit followed through Stockton and the areas
26 around Stockton, with Stockton Police officers firing on the moving vehicle as they
27 _____

28 ¹ All three gunmen actually had prominent "NCS" tattoos.



1 traveled through highly populated areas. Despite air support, the rolling gun battle
2 continued with nearly 30 law enforcement vehicles chasing the suspect vehicle.

3 Eventually, the police disabled the vehicle at Otto Drive and Thornton Road in
4 Stockton and surrounded it. By then, the officers knew that Misty was the only
5 remaining hostage. But rather than secure her safety, and entirely disregarding her
6 well-being, officers opened fire on the vehicle without command. Thirty-four officers
7 fired over 600 bullets at the vehicle. Misty was used as a human shield against the
8 police bullets that ultimately claimed her life. Of the ten bullets that struck her, every
9 single one was fired by Stockton police. This unreasonable use of deadly force was the
10 polar opposite of police's mission to protect and serve the public. Instead, they actively
11 deprived a family of its wife and mother, and destroyed the life of an innocent hostage.

12 In addition to a negligence claim for the unreasonable use of deadly force,
13 liability can also be imposed under Title 42 United State Code section 1983, which
14 provides: "every person who, under color of any statute, ordinance, regulation, custom,
15 or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United
16 States or other person within the jurisdiction thereof to the deprivation of any rights,
17 privileges, or immunities secured by the Constitution and laws, shall be liable to that
18 party injured."

19 Here, the suspects' vehicle had been immobilized by the police and they were
20 surrounded. Misty was the most vulnerable person in that situation and police knew
21 she was the sole remaining hostage. Her safety should have been paramount, but the
22 police took the opposite approach. Instead of taking reasonable and appropriate steps to
23 remove her safely from the vehicle, they opened fire, and continued to fire while she
24 was held up as a human shield by one of the suspects. Misty's right to life and liberty
25 were violated by the officers. Had they acted reasonably, she would be alive today.

26 Finally, liability against a governmental entity such as the City of Stockton can be
27 imposed when supervisory employees breach their duty to supervise subordinates and
28 thereby expose third persons to harm. (*C.A. v. William C. Hart Union High School District*



(2012) 53 Cal.4th 861, 875-879; *Dailey v. Los Angeles Unified Sch. Dist.* (1970) 2 Cal.3d 741, 747.) Here, the actions of the officers on July 16, 2014 show a clear failure in their training and supervision in responding to bank robberies, vehicular pursuits, hostage situations, and the use of deadly force. In addition, police had actual knowledge that one of the *same* suspects committed the *same* crime at the *same* bank branch almost seven months before the day Misty was killed. But due to their lack of training and supervision, there was absolutely no follow-up on this information, the suspect was permitted to roam free and commit the same crime that ultimately would cost Misty her life.

B. The January 31, 2014 robbery at the Bank of the West branch on Thornton Rd. in Stockton.

In the 30 months before the July 16, 2014 robbery, the Bank of the West branch on Thornton Rd. in Stockton had been victimized by numerous robberies. In each case, the suspects were able to escape apprehension and flee with significant sums of money.

The January 31, 2014 robbery was particularly brazen. The lone unarmed security guard stood outside the bank to the left of the doors. The assailants were not deterred by the presence of the guard, and at gunpoint brought him into the branch loudly announcing their presence to all the occupants of the bank. The security guards hands were zip-tied as the bank employees were herded to the front right of the bank by the other gunmen who easily gained access behind the teller counter by jumping the lower ADA teller station. Two employees were taken to the vault by one gunman, while the other employees and the sole customer were held at gunpoint by the other gunman. The gunmen were wearing hooded sweatshirts, sunglasses, and easily recognized fake beards. When the money was obtained from the vault, they obtained the car keys from one of the employee's vehicles, and left the bank.

1 C. The Stockton police failed to train and supervise its employees to
2 follow up on known leads of one of the perpetrators following the
3 January 31, 2014 robbery.

4 On the very same day of the January 31, 2014 robbery, and after taking the
5 statement of a bank employee, Stockton police located a suspicious vehicle reported
6 southwest of the bank belonging to Gilbert Renteria, Jr., who was one of the gunmen
7 from the January 31 robbery.

8 The police clearly made the connection that the vehicle belonged to a person that
9 matched the description of one of the gunmen involved in the bank robbery—Gilbert
10 Renteria, Jr. Upon searching the car, the police found not only Renteria's California
11 identification, but two large freezer bags of live ammunition with in excess of 180
12 rounds of ammunition.

13 Despite having located, identified, and impounded the suspicious vehicle on
14 January 31, 2014 registered to Gilbert Renteria, Jr., containing his identification and a
15 store of ammunition, the Stockton Police Department failed to supervise its employees
16 in following up on this important lead. Renteria, who was a known criminal on parole
17 and could have been arrested for possessing firearms, continued to live in Stockton, and
18 was never questioned about his possible role in the robbery. The Stockton Police
19 Department failed to manage, direct, and ensure its officers and detectives followed
20 protocol in investigating a possible suspect in the January 2014 robbery.

21 The police also had Mr. Renteria's current address in Stockton in their system as
22 early as January 31, 2014—which was the *same address* at which he resided until the July
23 16, 2014 robbery. On April 7, 2014, a "Gilbert"—Renteria Jr.'s father—even called the
24 Stockton Police to report a vicious dog fight and requested officers to break it up at the
25 address on file for Renteria. Yet even with this obvious opportunity to contact and
26 question a person of interest, the Stockton Police failed to apprehend Mr. Renteria.

27 As a result, Renteria was never questioned or apprehended following the
28 January 31, 2014 robbery. Renteria and Alex Martinez clearly felt that they could repeat
the same crime at the same location on July 16, 2014 before the bank branch closed

1 without fear of being caught. The City of Stockton Police had Renteria, yet did nothing
2 to apprehend him.

3
4 **D. The July 16, 2014 robbery.**

5 The Bank of the West on Thornton remained an easy, and lucrative, mark for the
6 criminals. Renteria, Martinez, and a third person, Jaime Ramos, knew how they could
7 successfully rob this bank. In fact, the January 31, 2014 robbery provided the blueprint
8 for the identical robbery on July 16, 2014.

9 The timeline of significant events pertaining to the July 16, 2014 robbery are as
10 follows. Shortly after 2:00 p.m., Misty Holt-Singh pulled up to the ATM outside of the
11 bank. Three armed suspects then forced the security guard, two male customers, and
12 Misty into the bank at gunpoint at approximately 2:10 p.m. The suspects proceeded
13 with the robbery, with some heading into the vault, and others jumping the counter. At
14 2:12 p.m., the first Stockton police car arrived on scene. Shortly thereafter, the suspects
15 left the bank with only a single hostage. But as they attempted to leave the bank
16 premises, police officers brandished weapons and threatened to shoot the suspects,
17 forcing all three back into the bank. Once forced back inside the bank, the suspects
18 grabbed two additional hostages, including Misty Holt-Singh. At 2:16 p.m., the
19 suspects, now with three hostages, left the bank in a bank employee's vehicle, and
20 began an hour long pursuit.

21
22 **E. Police engage in a high speed pursuit through Stockton and Lodi**
23 **culminating in the Stockton police officers using deadly force by firing**
24 **600 rounds at the vehicle in which Misty Holt-Singh was a hostage.**

25 The police then began a high speed pursuit through residential streets, firing
26 their weapons numerous times at the vehicle containing the hostages. The pursuit
27 lasted approximately one hour and reached speeds in excess of 120 mph. The high-
28 speed pursuit went onto city and residential streets of Lodi and Stockton.

1 Shortly after the pursuit started, the bank manager was accidentally shot in the
2 leg by one of the gunmen. She sustained a fractured left ankle from a gunshot wound,
3 as well as a gunshot wound to the right thigh. At 14:18:34, just two minutes after
4 leaving the bank, the bank manager was pushed out of the vehicle so one of the
5 suspects could drive. The bank manager was not killed by the suspects.

6 The high speed pursuit continued, and included air support. The officers
7 continued to discharge weapons from moving vehicles at the moving suspect vehicle.
8 The other hostage jumped out of the moving vehicle (as opposed to Misty Holt-Singh,
9 the only other hostage remaining in the car) which was under fire by the armed
10 response of Stockton police officers. The other hostage was not shot or killed by the
11 suspects.

12 At 15:17:56, the vehicle containing the three gunmen and hostage Misty Holt-
13 Singh was disabled at Thornton Road and Otto Drive. Indiscriminate police gunfire was
14 then directed at the suspect vehicle upon termination of the pursuit, with full
15 knowledge that hostage Misty Holt-Singh was still inside. Over 600 rounds were fired
16 by at least 34 police officers at a vehicle containing a known innocent hostage. The
17 devastation to the vehicle can be seen in the following photo:



26 The inability of the police officers to effectively direct their deadly gunfire away
27 from Misty during and immediately following the termination of the pursuit created an
28 unreasonable risk of causing her death or serious physical injury. The indiscriminate



1 gunfire was counter to the primary police objective in hostage taking situations – that
2 being to take necessary steps to free innocent persons who are endangered and held
3 against their will, and take reasonable action having a high probability of neutralizing
4 the deadly threat or preventing the situation from escalating. Instead, Misty Holt-Singh
5 was struck and killed by at least 10 bullets fired by the police officers.

6
7 4. Action or inaction of city employee(s) caused the death of Misty Holt-Singh.

8 A. The tactical decisions by the Stockton Police Department that led to the
9 use of deadly force establish its negligence.

10 Government Code 820(a) provides that "a public employee is liable for injury
11 caused by his act or omission to the same extent as a private person." California
12 Government Code § 815.2 states that "(a) A public entity is liable for injury proximately
13 caused by an act or omission of an employee of the public entity within the scope of his
14 employment if the act or omission would, apart from this section, have given rise to a
15 cause of action against that employee or his personal representative."

16 The Stockton Police department failed to follow standard and well-recognized
17 protocol when responding to the in-progress armed bank robbery. The first arriving
18 officers should arrive in stealth to avoid detection by the perpetrators. Officers want to
19 preserve the element of surprise to avoid a hostage situation in which the people inside
20 the bank may be harmed. In other words, the officers do not want the criminals to know
21 of their presence because doing so would endanger the innocent hostages inside the
22 establishment.

23 This fundamental protocol is set forth in the 1992 Model Policy for a Bank Alarm
24 Response from the International Association of Chiefs of Police National Law
25 Enforcement Policy Center (Dept of Justice) as follows:

26 B. Responding Officer Procedures

- 27 1. Responding officers shall use appropriate vehicular warning devices when
28 approaching the scene, but the siren will not be used within the hearing
range of the reported robbery.

CALIFORNIA GOVERNMENT CODE § 910 CLAIM AGAINST THE CITY OF STOCKTON



1 robbers. Instead of allowing the gunmen to continue leaving the Bank as was originally
2 planned, the gunmen were forced back into the bank, grabbed more hostages and then
3 fled.



(Photograph showing an officer in full view of the Bank windows.)

15 The department's negligent actions then continued for well over an hour. Instead
16 of trying to preserve the safety of the hostage, the Stockton Police Department engaged
17 in a high-speed chase through residential streets and public highways. During this
18 chase, which lasted over an hour, officers repeatedly discharged their weapons at the
19 fleeing vehicle even though it was known there was an innocent hostage inside.

20 The International Association of Chiefs of Police Model Policy on Vehicular
21 Pursuit notes that there should be no more than *two* police vehicles involved in a
22 vehicular pursuit. And, when airborne surveillance is available, even the primary
23 police vehicle shall become secondary to the airborne support. Even the Stockton Police
24 Department General Order provides that no more than *three* police vehicles should be
25 engaged in pursuit with lights and sirens. (General Order V-1.) Yet here, where a
26 helicopter was available and involved, there were at times nearly 30 police vehicles
27
28



1 involved in the hour-long police chase. This presented a further unreasonable risk of
2 harm to the hostages and other innocent by-standers.

3 Stockton Police Department General Order V-1 also provides that "Departmental
4 policy regarding the use of firearms . . . generally prohibits shooting at a fleeing vehicle.
5 (1) Experience reveals that shooting at fleeing vehicles is generally ineffective, and the
6 hazards are great. Decisions to fire at moving vehicles must be based on the most
7 compelling circumstances."

8 Yet here, the police repeatedly fired at the suspects' vehicle, even discharging
9 their weapons in an attempt to puncture the tires. This presented a further risk of
10 unreasonable harm to the hostage.

11 Finally, Stockton Police officers discharged over 600 rounds at the suspect
12 vehicle once it had been disabled. The inability of the police officers to effectively direct
13 their deadly gunfire away from Misty during and immediately following the
14 termination of the pursuit, created an unreasonable risk of causing her death or serious
15 physical injury. This was counter to the primary police objective in hostage taking
16 situations—that being to take necessary steps to free innocent persons who are
17 endangered and held against their will, and take reasonable action having a high
18 probability of neutralizing the deadly threat or preventing the situation from escalating.
19 The chasing officers could have withdrawn from the pursuit, allowing the police
20 helicopter to visually track the escaping vehicle until Misty was free of the vehicle. The
21 fact that two other hostages were already expelled from the vehicle, the unarmed guard
22 at the bank was merely tied up, and Misty was never shot by the fleeing suspects,
23 suggests that she was not going to be harmed by the suspects absent the armed
24 response of police officers.

25
26 **B. The unreasonable use of deadly force by the Stockton Police**
27 **Department.**

28 The officer's high-speed chase and pursuit of the robbers violated standard
police protocol and was negligent. However, despite the negligent conduct of the police

1 after the escape from the bank, Misty was miraculously uninjured when the vehicle was
2 brought to stop. There is no reason she should not still be alive today.

3 Here, the suspects' vehicle had been immobilized and they were surrounded.
4 Once the pursued vehicle is stopped "officers shall utilize appropriate officer safety
5 tactics and shall be aware of the necessity to utilize only reasonable and necessary force
6 to take suspects into custody." (IACP Vehicle Pursuit Model Policy (1996).)

7 Misty was the most vulnerable person in the vehicle. Her safety should have
8 been paramount, but the police took the opposite approach. Instead of taking
9 reasonable and appropriate steps to remove her safely from the vehicle, they opened
10 fire, and continued to fire while she was held up as a human shield by one of the
11 suspects.

12 Based on the tactical conduct and decisions preceding and at the time of the use
13 of deadly force, the City of Stockton and its police department and officers' conduct was
14 unreasonable, and negligently caused Misty's death.

15
16 **C. The Stockton Police officers violated Ms. Holt-Singh's civil rights with
their excessive use of deadly force.**

17 Regrettably, the militarization of police departments across the United States is
18 now the norm. Police have gone unchecked in their use of deadly force against suspects.
19 Misty's tragedy in Stockton, California exemplifies the gravity of unrestrained police
20 use of force in this country. When police can use deadly force easily and without
21 repercussion, the results are inevitable—innocent people will die.
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Title 42 United State Code section 1983 provides that "every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to that party injured." Section 1983 claims may be brought in either state or federal court. (*Pitts v. County of Kern* (1998) 17 Cal.4th 340, 348.)

Here, there is no dispute that the officers were acting under color of the law when they undertook the high speed chase that lasted over an hour, and indiscriminately shot a vehicle where Misty was a hostage, killing Misty. The conduct of the officers was unreasonable and excessive. It deprived Misty of her right to life and liberty.

Misty's right to life and liberty were violated by the officers. Had they acted reasonably, she would be alive today. No one is safe if the police are not held accountable for killing innocents.

D. The Stockton Police department was also negligent in its training and supervision of its employees.

Negligent supervision has been recognized as a viable claim against a governmental entity when supervisory employees breach their duty to supervise

1 subordinates thereby exposing third persons to harm. (*C.A. v. William C. Hart Union*
2 *High School District* (2012) 53 Cal.4th 861, 875-879; *Dailey v. Los Angeles Unified Sch. Dist.*
3 (1970) 2 Cal.3d 741, 747.)

4 Since the California Supreme Court has expanded the scope of the permissible
5 evidence to support a negligence claim against police officers to include tactical conduct
6 and decisions preceding the use of deadly force, (*Hayes, supra*, 57 Cal.4th 622), plaintiffs
7 also have a negligent supervision claim for the police officer's conduct and decisions
8 made during the bank robbery and the during the hour long chase and armed response
9 on July 16, 2014. The Stockton police officers were not properly trained and supervised
10 to respond to the Bank robbery, how to conduct themselves in a hostage situation, or
11 the proper measures to take to protect innocent citizens during a high-speed chase.

12 Following the January 31, 2014 robbery, the Stockton Police Department had
13 located Gilbert Renteria, Jr.'s vehicle and identified it as a "suspicious" vehicle. The
14 vehicle was impounded, and not only was Renteria's identification located within the
15 vehicle, but over 180 rounds of live ammunition was found inside. The department also
16 identified Renteria as a person matching the description of one of the suspects involved
17 in the bank robbery that day. In April 2014, police even received a call from a "Gilbert"
18 to respond to vicious dogs *at the address* on file for Renteria. Despite this opportunity to
19 investigate and question a person of interest in the January 31 robbery, the police failed
20 to properly follow-up.

21 The Stockton Police had identified Renteria as a suspect for the January 31, 2014
22 robbery. It appears that there was no follow-up investigation on the information that
23 was gathered, and those supervisory persons who were vested with the responsibility
24 to make sure that a proper investigation was conducted completely "dropped the ball."
25 Had there been any reasonable supervision of its employees, Renteria would have been
26 apprehended long before having the opportunity to repeat the same crime on July 16,
27 2014.

28

1 4. A general description of damages and losses

2 Claimants Paul Singh, Paul Singh, Jr., and Mia Singh—on behalf of themselves
3 and the Estate of Misty Holt-Singh—seek all damages, relief, and remedies available to
4 them under California and federal law for the death of their wife and mother, Misty
5 Holt-Singh, including punitive and exemplary damages against the offending officers.
6 Their individual damages are further detailed below.

7
8 A. Paul Singh —wrongful death damages

9 The legal standard for the measure of damages that a jury uses to evaluate the
10 noneconomic value for the loss of the relationship resulting from the death of an adult
11 is set forth in CACI 3921.

12 These noneconomic damages are set forth as:

- 13 1. The loss of Misty Holt-Singh's love, companionship, comfort, care,
14 assistance, protection, affection, society, moral support; [and]
15 2. The loss of the enjoyment of sexual relations; and
16 3. The loss of Misty Holt-Singh's training and guidance.

17 As a result of the death of his wife, Paul Singh has suffered the loss of his wife's
18 love, companionship, comfort, care, assistance, protection, affection, society and moral
19 support, and loss of sexual companionship

20 But these words only start to explain the loss of Misty to her family.

21 Misty loved her husband Paul and her children Paul, Jr. and Mia, more than
22 anything else in life. Misty was the rock of the family.

23 A successful marriage requires two people to bind their hearts together. Paul and
24 Misty were inseparable, each making the other better. After 20 years together they
25 remained deeply in love, having celebrated life's highlights while overcoming
26 challenges. Misty believed in Paul and encouraged him to succeed. They had plans to
27 grow old together. While Misty had a beautiful smile and piercing blue eyes, it was her
28 heart and compassion for others that linked her forever to Paul. When Misty was killed,



1 a part of Paul also died. An irreplaceable void now exists, which will last for 33.5 years
2 – Paul's life expectancy. Paul not only lost the love, companionship, affection and
3 support of his wife, Paul must also fill the void lost by the death of his children's
4 mother.

5 Paul Singh has also suffered the following economic damages:

- 6 1. The value of financial support that Misty Holt-Singh would have
7 contributed to the marriage during her life expectancy or the life
8 expectancy of Paul Singh, whichever is shorter;
- 9 2. The loss of gifts or benefits that Paul Singh would have expected
10 to receive from Misty Holt-Singh;
- 11 3. The reasonable value of household services that Misty Holt-Singh would
12 have provided.

13
14 **B. Wrongful death damages for death of their mother – Paul Singh Jr. and
15 Mia Singh**

16 As a result of the death of their mother, Paul Singh Jr. and Mia Singh have
17 suffered the loss of their mother's daughter's love, companionship, comfort, care,
18 assistance, protection, affection, society and moral support. They have also suffered the
19 loss of Misty Holt-Singh's training and guidance.

20 The bond and love a mother has for her children is unique and cherished. There
21 is a deeply biological connection. Only a mother can feel the child's heartbeat inside her
22 while the child grows and develops. The mother shares and sacrifices her body for nine
23 months for her child to live. Everyone has only one biological mother.

24 But the relationship between a mother and her children transcends the obvious
25 biological connection. A mother's love for her children is one of the most treasured and
26 valued relationship that exist. A mother loves her children more than she loves herself.
27 A mother's love for her children is unconditional. A mother is a child's cheerleader,
28 caretaker, support group, teacher, counselor, provider, and friend all wrapped around
love and affection. As one author wrote "When you look into your mother's eyes, you

1 know that is the purest love you can find on this earth." (Mitch Albom, *For One More*
2 *Day*).

3 Misty was all of these things and more to her children Paul Jr. and Mia. Misty
4 was best friends with both—holidays, birthdays, events, and *life itself* will never be the
5 same. Their loss of the unique relationship with their mother and her love will last for
6 41 years — Misty's life expectancy.

7

8 1. Paul Singh, Jr.

9 Paul Jr. has lost his mother's love, comfort, affection, and companionship. Misty
10 was Paul Jr.'s confidante — the person he would seek guidance and counseling from.
11 All of Paul Jr.'s friends loved hanging out with Misty. She was fun and energetic,
12 supportive and understanding. Paul Jr. no longer has his mother to share his life's
13 successes with, or to comfort him during times of tribulation. Paul Jr. will never be able
14 celebrate his college graduation, meeting his future wife, or becoming a father himself
15 with his mother.

16

17 2. Mia Singh

18 Misty and Mia were exceptionally close. Mia just entered her teenage years, a
19 very important time in a young girl's life. She no longer has her mother to share the
20 variety of issues that a teenage girl faces — peer pressure regarding appearance, friends,
21 dating, feminine issues, etc. Misty and Mia shared a love and adventure for amusement
22 parks. Mia also inherited her passion and love for softball from her mother. Misty
23 would travel with Mia to various softball tournaments around the state of California,
24 and Mia believes she always played better when her mother was watching. Mia has lost
25 her biggest fan and booster, her best friend, her mother. Mia will never be able to share
26 with her mother her first date, her first prom, her wedding, or receive her mother's
27 guidance when Mia becomes a mother.

28

1 5. Names of public employee or employees causing damage or loss

2 City of Stockton police officers:

3 Doug Anderson	Mark Boling
4 David Brown	Brad Burrell
5 George Camacho	Ralph Dominguez
6 Pancho Freer	Matthew Garlick
7 Erika Gonzalez	John Griffin
8 Gabriel Guerrero	David Hiland
9 Cliff Hoffman	Rodger Holscher
10 Chief Eric Jones	Kevin Knall
11 Sean Konoske	Patrick Mayer
12 Julio Morales	Ryan Morris
13 Ryan Rankin	Mike Rodriguez
14 Ivan Rose	Lance Saur
15 Michael Serna	Pete Smith
16 Telly Strika	Jason Underwood
17 Neto Urias	Samnang Ven
18 Edward Webb	Drake Wiest
19 Ronald Zalunardo	Lieutenant Zakhary
20 Kristen McClure	Miroslava Moreno

21 Claimants will also add such other employees and officers of the City of Stockton
22 police department who were involved with the events of July 16, 2014, including the
23 arrival at the bank, the police chase, and the deadly shooting as they become available.
24 Also, supervisors of the Stockton Police Department regarding the training, hiring,
25 supervision of officers how to respond to bank robberies, hostage situations, and the
26 use of deadly force as well as the supervisors who failed to monitor officers and
27 detectives, and follow up on the police investigation based on the suspected
28 involvement of Gilbert Renteria, Jr. in the January 31, 2014 robbery.

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6. Amount Claimed

Government Code § 910(f) states "if the amount claimed exceeds ten thousand dollars (\$ 10,000) no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case." The claims of Paul Singh, Paul Singh, Jr., and Mia Singh greatly exceed the amount stated in Government Code § 910(f) and will be an unlimited civil case. The damages will exceed the jurisdictional limit for a limited civil case.

Dated: February 4, 2014

Respectfully submitted,

SHERNOFF BIDART
ECHEVERRIA BENTLEY LLP

By 

GREGORY L. BENTLEY
Attorneys for Paul Singh, Paul Singh Jr.,
Mia Singh.

Re: Claim of Misty Holt-Singh

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 600 South Indian Hill Boulevard, Claremont, California 91711.

On February 4, 2015, I served the foregoing documents described as **CLAIM FOR DAMAGES PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 910, ET SEQ** on the interested parties in this action by placing the original XX a true copy thereof enclosed in sealed envelopes addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

☒ BY CERTIFIED/RETURN RECEIPT MAIL I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Claremont, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

☐ BY FACSIMILE ("FAX") In addition to the manner of service indicated above, a copy was sent by FAX to the parties indicated on the service List.

☐ BY OVERNIGHT MAIL/COURIER To expedite service, copies were sent via FEDERAL EXPRESS.

☐ VIA EMAIL I caused the document to be served via electronic mail to the email addresses listed on the service list

☐ BY PERSONAL SERVICE I caused to be delivered such envelope by hand to the individual(s) indicated on the service list.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on February 4, 2015, at Claremont, California.


CYNTHIA GUTIERREZ

Re: Claim of Misty Holt-Singh

SERVICE LIST

City Clerk's Office
CITY OF STOCKTON
425 North El Dorado Street
Stockton, CA 95202

CITY OF STOCKTON

CERTIFIED MAIL



7014 0510 0000 2706 2632
7014 0510 0000 2706 2632

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Remains valid only if the insurance coverage is voided)

For delivery information visit our website at www.usps.com

Postage	\$
Certified Fee	
Rt. Fee (if not paid)	
(Under \$5.00 required)	
(Required delivery fee for insured mail)	
Total Postage & Fees	\$7.82

City of Stockton City Clerk's Office
425 North El Dorado Street
Stockton, CA 95202

**SHERNOFF BIDART
ECHEVERRIA BENTLEY**
LAWYERS FOR INSURANCE POLICYHOLDERS
568 S. INDIAN HILL BLVD. CLAREMONT, CA 91711

City of Stockton
City Clerk's Office
425 North El Dorado Street
Stockton, CA 95202

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SENDER: COMPLETE THIS SECTION

- 1. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- 2. Print your name and address on the reverse so you can return the card to you.
- 3. Attach this card to the back of the package, or on the front if space permitted.

1. Article addressed to:

City of Stockton
City Clerk's Office
425 North El Dorado Street
Stockton, CA 95202

COMPLETE THIS SECTION ON DELIVERY

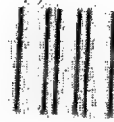
- A. Signature ☒ X
- B. Received by (Printed Name) ☐ C. Date of Delivery ☐
- D. Delivery address different from item 1? ☐ Yes ☒ No
If YES, enter delivery address below:

Signature ☐ Certified Mail ☐ Express Mail

EXHIBIT H

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature <input checked="" type="checkbox"/> Addressee <input type="checkbox"/> Agent</p> <p>B. Received for Limited Address <input type="checkbox"/> Date of Delivery <u>2-4-98</u></p>	
<p>1. Article Addressed to:</p> <p><u>City of Stockton</u> <u>City Clerk's Office</u> <u>425 North El Dorado Street</u> <u>Stockton, CA 95202</u></p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
<p>2. Article Number (Transfer from service label)</p>		<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		<p>7014 0510 0000 2708 2632</p>	
<p>PS Form 3811, February 2004</p>		<p>Domestic Return Receipt 102598-02-M-1540</p>	

UNITED STATES POSTAL SERVICE



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Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

SHEROFF BIDART
KORNGOLD BENTLEY LLP
600 S. Indian Hill Blvd.
Glencourt, CO 81714

ATTN: Cynthia Gutierrez

PE: Hc 02/10 [Intelligent Mail barcode]

EXHIBIT I



601 University Avenue, Suite 150
Sacramento, CA 95825
Telephone No. (916) 564-6100
Telecopier No. (916) 564-6263
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Carrie A. Fredericksen

John A. Whitesides
Amie McTavish
Seren M. Warner
Kevin J. Dehoff
Lance M. Martin

*Member of American Board
of Trial Advocates (ABOTA)

June 18, 2015

Greg L. Bentley
(via email: gbentley@shernoff.com)
SHERNOFF, BIDART, ECHEVERRIA, BENTLEY
600 S. Indian Hill Blvd.
Claremont, CA 91711

Re: Holt-Singh v. City of Stockton

Dear Greg:

Thank you for your recent letter about the mediation with the Bank of the West in Orange County. The City of Stockton and its representatives would be happy to participate. By copy to Justice Trotter, we would ask to be sent details of the session and any agreements that need to be signed.

I look forward to seeing you next month.

ANGELO, KILDAY & KILDUFF, LLP


By: BRUCE A. KILDAY

cc: Justice John K. Trotter (Ret.) (via email: jtrotter@jamsadr.com)
Donald W. Carlson (via email: dcarlson@ccplaw.com)
Ted Wood, Deputy City Attorney, City of Stockton (via email)

Re: Holt-Singh v. City of Stockton

Page 2

June 18, 2015

bcc: David Clovis (via email: david@cjprma.org)
Craig Schweikhard (via email: craig@cjprma.org)

{00094904; 1}

EXHIBIT J

B30 (Official Form 10) (04/13)

UNITED STATES BANKRUPTCY COURT Eastern District of California		PROOF OF CLAIM
Name of Debtor: City of Stockton, California	Case Number: 12-32118	FILED U.S. Bankruptcy Court Eastern District of California 11/20/2015 Wayne Blackwelder, Clerk COURT USE ONLY
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Sherhoff Bidart Echeverria Bentley LLP		
Name and address where notices should be sent: Sherhoff Bidart Echeverria Bentley LLP Attn: Gregory L. Bentley, Esq. 600 S. Indian Hill Blvd. Claremont, CA 91711 Telephone number: (909) 621-4925 email: gbentley@sherhoff.com		<input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
Name and address where payment should be sent (if different from above): Telephone number: _____ email: _____		
1. Amount of Claim as of Date Case Filed: <u>\$566,400.00</u> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: <u>Wrongful death/civil rights violation</u> (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor: _____	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____ Value of Property: \$ _____ Annual Interest Rate (when case was filed) ____% <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ <u>0.00</u>		
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,498*) earned within 90 days before the case was filed or the debtor's business ceased, whichever is earlier - 11 U.S.C. § 507(a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).	<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)().
*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
6. Credit. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 8 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction 57, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8) Check the appropriate box.

☐ I am the creditor.

☒ I am the creditor's authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent.
(See Bankruptcy Rule 3004.)

☐ I am a guarantor, surety, indorser, or other codebtor.
(See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Gregory L. Bentley, Esq.

Title: Attorney for Claimants

Company: Sharnell Biderl Echeverria Bentley LLP

Address and telephone number (if different from notice address above):

/s/ Gregory L. Bentley, Esq.
(Signature)

11/20/2015
(Date)

Telephone number: _____ email: _____

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

B10 (Official Form 103) (04/13)

UNITED STATES BANKRUPTCY COURT <u>EASTERN DISTRICT OF CALIFORNIA</u>		AMENDED PROOF OF CLAIM
Name of Debtor: CITY OF STOCKTON, CALIFORNIA	Case Number: 2012-32118	<div style="text-align: center; border-top: 1px solid black; border-bottom: 1px solid black; margin: 10px 0;">COURT USE ONLY</div> <input checked="" type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: February 4, 2015 <input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Paul Singh, Paul Singh, Jr., Mia Singh, and the Estate of Misty Holt-Singh		
Name and address where notices should be sent: Shernoff Bidart Echeverria Bentley LLP Attn: Gregory L. Bentley, Esq. 600 S. Indian Hill Blvd., Claremont, California 91711 Telephone number: (909) 621-4935 email: gbentley@shernoff.com		Name and address where payment should be sent (if different from above): Telephone number: _____ email: _____
1. Amount of Claim as of Date Case Filed: <u>\$ See attached.</u> If all or part of the claim is secured, complete item 4. If all or part of the claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: <u>Lawsuit for wrongful death, violation of civil rights and battery</u> (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor: _____	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____ Value of Property: \$ _____ Annual Interest Rate _____ % <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4). <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5). <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____). Amount entitled to priority: \$ _____
*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

B10 (Official Form 10) (04/13)

7. Documents: Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(a)(3)(A). If the claim is secured, box 4 has been completed, and redacted copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

8. Signature: (See instruction #8)

Check the appropriate box.

- ☐ I am the creditor. ☒ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Gregory L. Bentley

Title: Attorney for Claimants

Company: Sheroff Bidart Echeverria Bentley LLP

Address and telephone number (if different from notice address above):

(Signature)

November 20, 2015
(Date)

Telephone number: _____ email: _____

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply. Items to be completed in Proof of Claim form.

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rules of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

4a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the

claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the unpaid interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in-person, if your name is on the signature line, you are responsible for the declaration. Print the name and title. If any of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a service, identify the corporate service as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS

Debtor

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

Creditor

A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).

Claim

A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

Proof of Claim

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

Secured Claim Under 11 U.S.C. § 506 (a)

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.

A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

Unsecured Claim

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be ~~partly~~ unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

Claims Entitled to Priority Under 11 U.S.C. § 507 (a)

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

Redacted

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of ~~any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.~~

Evidence of Perfection

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

INFORMATION

Acknowledgment of Filing of Claims

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.uscourts.gov) for a small fee to view your filed proof of claim.

Offers to Purchase a Claim

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

**ADDENDUM TO THE AMENDED CLAIM OF PAUL SINGH,
THE ESTATE OF MISTY HOLT-SINGH, PAUL SINGH JR., AND MIA SINGH**

Paul Singh, individually and as successor-in-interest to decedent Misty Holt-Singh; Paul Singh, Jr., individually; and Mia Singh, by and through her Guardian Ad Litem Paul Singh (collectively, the "Claimants") hereby submit this amendment to their previously filed claim (the "Amended Claim") in the above-captioned chapter 9 bankruptcy case of the City of Stockton, California.

THE INITIAL CLAIM

1. On February 4, 2015, the Claimants timely filed the appropriate governmental claims with the City of Stockton, in accordance with Section 910 and 915(b) of the California Government Code (the "Claim"). The Claimants, through their counsel, sent the Claim via certified mail (return receipt requested) addressed to the City of Stockton, City Clerk's Office, 425 North El Dorado Street, Stockton, California 95202. The return receipt shows that the Claim was received and signed for by the City of Stockton's Clerk's Office on February 9, 2015. A true and complete copy of that Claim is attached hereto as Exhibit A.

2. The *First Amended Plan for the Adjustment of Debts of City of Stockton, California, as Modified (August 8, 2014)* [Docket No. 1645] (the "Amended Plan") classified the Claim as a General Liability Claim, which was defined as "a tort or contract Claim filed against the City pursuant to the Government Claims Act, California Government Code section 810 et seq." Amended Plan, p. 13, ln. 9-10.

3. This Amended Claim amends the Claim in that it (i) supplements the Claim with additional documentation related to the pending state court action against the City of Stockton designated as *Singh v. City of Stockton*, Case No. 39-2015-00328676-CU-CR-STK (San Joaquin Sup. Ct.) (the "State Court Action"), and (ii) adds Buchalter Nemer P.C. as affiliated general insolvency counsel and as a notice party for the Claim.

BASIS OF CLAIM

4. On July 16, 2014, Misty Holt-Singh was tragically killed by officers of the City of Stockton's police department in connection with an armed bank robbery that began within the

1 City of Stockton. As a result of this incident, the Claimants hold claims against the City of
2 Stockton including, but not limited to, wrongful death, negligence, and violation of civil rights
3 under 42 U.S.C. § 1983.

4 5. Under California law, before a party may sue a governmental entity for money
5 damages, that party must first file a claim meeting the requirements of the California Government
6 Claims Act., California Government Code Section 810 *et seq.* The deadline for the Claimants to
7 assert a claim under the California Government Claims Act was January 16, 2015. On or about
8 January 7, 2015, the Claimants and the City of Stockton, on its own behalf and on behalf of the
9 Stockton Police Department, entered into a Tolling Agreement extending the deadline for the
10 Claimants to submit its Government Claims Act claim from January 16, 2015 to April 16, 2015.

11 6. The City of Stockton failed to act on the Claimants' governmental claim within 45
12 days from the date of its filing thereby allowing the Claimants to file their *Complaint and*
13 *Demand for Jury Trial* asserting causes of action for violation of civil rights under 42 U.S.C.
14 § 1983, negligence and battery in the California Superior Court, County of San Joaquin,
15 commencing State Court Action.

16 7. On June 28, 2012, prior to the events that took the life of Misty Holt-Singh, the
17 City of Stockton filed its bankruptcy petition in the United States District Court, Eastern District
18 of California, commencing the above-referenced bankruptcy case under chapter 9 of title 11 of
19 the United States Code (the "Bankruptcy Code").

20 8. On or about August 8, 2014, the City of Stockton filed its *First Amended Plan for*
21 *the Adjustment of Debts of City of Stockton, California, as Modified (August 8, 2014)* [Docket
22 No. 1645] (the "Amended Plan").

23 9. The Amended Plan provided for the treatment of General Liability Claims in
24 "Class 14 – Claims of Certain Tort Claimants" as follows:

25 The SIR Claim Portion of each Allowed General Liability Claim will be paid on
26 the Effective Date from the Risk Management Internal Service Fund, and will
27 receive the same percentage payment on the dollar of Allowed Claim as will the
28 holders of Allowed Class 12 Claims. The Insured Portion of each Allowed
General Liability Claim is not Impaired, and shall be paid by the applicable
excess risk-sharing pool.

1 Amended Plan, p. p. 43, ln. 11-15.

2 10. On February 4, 2015, the bankruptcy court confirmed the City of Stockton's
3 Amended Plan and entered its *Order Confirming First Amended Plan for the Adjustment of Debts*
4 *of City of Stockton, California, as Modified (August 8, 2014)* [Docket No. 1875].

5 11. Additionally, the Claimants and the City of Stockton engaged in mediation in
6 January 2015 before the Honorable John K. Trotter (Ret.). On January 30, 2015, litigation
7 counsel for the City of Stockton sent a letter to Claimants' counsel, Greg Bentley, and Justice
8 Trotter regarding the mediation and discussing the implications of the City of Stockton's
9 bankruptcy case. In that letter, the City of Stockton acknowledged that the City had tendered the
10 first \$1 million of its liability to the California Joint Powers Risk Management Authority (the
11 "Authority"). The City of Stockton also noted that if the Claimants' claim were to be litigated
12 then the "bankruptcy formula would apply to the entire [\$1 million self-insured portion], with [the
13 Authority] being responsible for a judgment in excess of \$1,000,000 up to a total of
14 \$39,000,000." The Claimants' and the City of Stockton participated in a second mediation
15 session in July 2015 as set forth in the City of Stockton's June 18, 2015 letter to counsel for the
16 Claimants.

17 SUPPORTING DOCUMENTS

18 12. The documents upon which this Amended Claim is based include (1) the
19 Claimants' *Governmental Claim Against the City of Stockton (California Government Code*
20 *Section 910)* (attached hereto as Exhibit A); (2) the Claimants' *Complaint and Demand for Jury*
21 *Trial* (attached hereto as Exhibit B), (3) the *Tolling Agreement* dated on or about January 7, 2015
22 executed by the Claimants and the City of Stockton (attached hereto as Exhibit C); (4) the City of
23 Stockton's *First Amended Plan for the Adjustment of Debts of City of Stockton, California, as*
24 *Modified (August 8, 2014)* (attached hereto as Exhibit D); (5) the January 30, 2015 letter from the
25 City of Stockton to the Claimants' counsel (attached hereto as Exhibit E); (6) the June 18, 2015
26 letter from the City of Stockton to the Claimants' counsel (attached hereto as Exhibit F).

27 13. Claimants reserve the right to supplement this Amended Claim with additional
28 supporting documentation as necessary and applicable.

CLASSIFICATION OF CLAIM

14. The Claimants' Amended Claim is a General Liability Claim pursuant to the City of Stockton's Amended Plan of Reorganization. The amount of the Claimants' Amended Claim will be determined in connection with the trial on the merits of the Amended Claim.

NOTICES

15. All notices and distributions in respect of this Amended Claim should be forwarded to counsel for the Claimants via overnight mail:

Shernoff Bidart Echeverria Bentley LLP
Attn: Gregory L. Bentley, Esq.
600 South Indian Hill Boulevard
Claremont, California 91711
Facsimile: (909) 625-6915

With a copy of all notices to be sent to insolvency counsel:

Buchalter Nemer, PC
Attn: Bernard D. Bollinger, Jr., Esq.
1000 Wilshire Boulevard, 15th Floor
Los Angeles, California 90017
Facsimile: (213) 896-0400

RESERVATIONS OF RIGHTS

16. Filing of this Amended Claim is not and should not be construed to be: (i) a waiver or release of the Claimants' rights against any other entity or person liable for all or part of any claim described herein; (ii) a waiver of the right to seek to have the reference withdrawn with respect to the subject matter of these claims, any objection or other proceedings commenced with respect thereto, or any other proceedings commenced in this case against or otherwise involving the Claimants; (iii) a waiver of any right of subordination in favor of the Claimants of indebtedness or liens held by creditors of Debtor; (iv) an election of remedy which waives or otherwise affects any other remedy of the Claimants; or (v) a waiver of any additional claims or other rights the Claimants may have against the Debtor, including but not limited to any claim for payment of an administrative expense pursuant to 11 U.S.C. § 503.

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1 17. The Claimants hereby reserve the right to amend and/or supplement this Amended
2 Claim from time to time hereafter as it may deem necessary and proper.

3 Dated: November 20, 2015

SHERNOFF BIDART ECHEVERRIA BENTLEY LLP

4
5 By: 

6 Gregory L. Bentley, Esq.
7 Counsel for Claimants
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EXHIBIT K

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Attorneys for Debtor
City of Stockton

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re
CITY OF STOCKTON, CALIFORNIA,
Debtor.

Case No. 2012-32118

Chapter 9

FIRST AMENDED PLAN FOR
THE ADJUSTMENT OF DEBTS
OF CITY OF STOCKTON,
CALIFORNIA, AS MODIFIED
(AUGUST 8, 2014)

FIRST AMENDED PLAN, AS
MODIFIED (AUGUST 8, 2014)

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The City of Stockton, California, a debtor under chapter 9 of the Bankruptcy Code in the case styled *In re City of Stockton, California*, Case No. 2012-32118, currently pending in the United States Bankruptcy Court for the Eastern District of California, hereby proposes the following First Amended Plan of Adjustment of Debts for City of Stockton, California, As Modified (August 8, 2014), pursuant to section 941 of the Bankruptcy Code.¹

Please refer to the Disclosure Statement for a discussion of the City's financial condition, the developments throughout the Chapter 9 Case, and for other important information. The City encourages you to read this Plan and the Disclosure Statement in their entirety before voting to accept or reject this Plan. No materials other than the Disclosure Statement and the various exhibits and schedules attached to or incorporated therein have been approved for use in soliciting acceptance or rejection of this Plan.

I. DEFINITIONS, INTERPRETATION AND RULES OF CONSTRUCTION

A. Definitions.

1. 2003 Plan/Police/Library Certificates means the 2003A Fire/Police/Library Certificates and the 2003B Fire/Police/Library Certificates.
2. 2003 Fire/Police/Library Certificates Reimbursement Agreement means that certain Reimbursement Agreement, dated as of June 1, 2003, by and between the Successor Agency and the City.
3. 2003 Fire/Police/Library Certificates Supplemental Trust Agreement means the First Supplemental Trust Agreement, dated as of May 9, 2013, by and among Wells Fargo, the Financing Authority, and the City, the form of which is attached as Exhibit B to the Declaration of Robert Deis in Support of the City of Stockton's Motion Under Bankruptcy Rule 9019 for Approval of Its Settlement with Ambac Assurance Corporation, filed in the Chapter 9 Case on February 26, 2013 [Dkt. No. 725].

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¹The definitions of capitalized terms used throughout this Plan are set forth in Section I(A). As set forth in Section I.B., unless otherwise noted, all references to a "section" are references to a section of the Bankruptcy Code.

4. 2003 Fire/Police/Library Certificates Trust Agreement means the Trust Agreement, dated as of June 1, 2003, by and among Wells Fargo, the Financing Authority, and the City, relating to the 2003 Fire/Police/Library Certificates.
5. 2003 Fire/Police/Library Certificates Trustee means Wells Fargo, as trustee under the 2003 Fire/Police/Library Certificates Trust Agreement, or any successor trustee thereunder.
6. 2003A Fire/Police/Library Certificates means the Certificates of Participation (Redevelopment Housing Projects) Series 2003A, issued on June 27, 2003, in the original principal amount of \$1,160,000.
7. 2003B Fire/Police/Library Certificates means the Certificates of Participation (Redevelopment Housing Projects) Taxable Series 2003B, issued on June 27, 2003, in the original principal amount of \$12,140,000.
8. 2004 Arena Bond Indenture means the Indenture of Trust, dated as of March 1, 2004, by and between the Successor Agency and the 2004 Arena Bond Trustee, relating to the 2004 Arena Bonds.
9. 2004 Arena Bond Insurance Policy means the Municipal Bond New Issue Insurance Policy No. 04010198 issued by NPPG, as successor to Financial Guaranty Insurance Company, with respect to the 2004 Arena Bonds.
10. 2004 Arena Bond Trustee means Wells Fargo, as indenture trustee under the 2004 Arena Bonds Indenture, or any successor indenture trustee thereunder.
11. 2004 Arena Bonds means the Successor Agency of the City of Stockton Revenue Bonds, Series 2004, (Stockton Events Center – Arena Project), issued on March 26, 2004 in the original aggregate principal amount of \$47,000,000.
12. 2004 Parking Bond Indenture means the Indenture of Trust, dated as of June 1, 2004, by and between the Financing Authority and the 2004 Parking Bond Trustee, relating to the 2004 Parking Bonds.

- 1 13. 2004 Parking Bond Insurance Policy means the Municipal Bond New
2 Issue Insurance Policy No. 04010390 issued by NPFG, as successor to Financial Guaranty
3 Insurance Company, with respect to the 2004 Parking Bonds.
- 4 14. 2004 Parking Bond Trustee means Wells Fargo, as indenture trustee
5 under the 2004 Parking Bonds Indenture, or any successor indenture trustee thereunder.
- 6 15. 2004 Parking Bonds means the Stockton Public Financing Authority
7 Lease Revenue Bonds, Series 2004, (Parking and Capital Projects), issued on June 25, 2004, in
8 the original aggregate principal amount of \$32,785,000.
- 9 16. 2006 SEB Bond Insurance Policy means the Financial Guaranty
10 Insurance Policy No. 47756(1) issued by NPFG, as successor to MBIA Insurance Corporation,
11 with respect to the 2006 SEB Bonds.
- 12 17. 2006 SEB Bond Trustee means Wells Fargo, as indenture trustee under
13 the 2006 SEB Bonds Indenture, or any successor indenture trustee thereunder.
- 14 18. 2006 SEB Bonds means the Stockton Public Financing Authority 2006
15 Lease Revenue Refunding Bonds, Series A, issued on April 6, 2006, in the original aggregate
16 principal amount of \$13,965,000.
- 17 19. 2006 SEB Indenture means the Indenture of Trust, dated as of March 1,
18 2006, by and between the Financing Authority and the 2006 SEB Bond Trustee, relating to the
19 2006 SEB Bonds.
- 20 20. 2007 Office Building Bond Insurance Policy means, collectively, the
21 Financial Guaranty Insurance Policy No. D-2007-293 and the Financial Guaranty Insurance
22 Policy No. D-2007-295, each issued by Assured Guaranty with respect to the 2007 Office
23 Building Bonds (Series A) and the 2007 Office Building Bonds (Series B), respectively.
- 24 21. 2007 Office Building Bond Trustee means Wells Fargo as the indenture
25 trustee under the 2007 Office Building Bonds Indenture, or any successor indenture trustee
26 thereunder.
- 27 22. 2007 Office Building Bonds means, collectively, the 2007 Series A Bonds
28 and the 2007 Series B Bonds.

- 1 23. 2007 Office Building Bonds Indenture means the Indenture of Trust,
2 dated as of November 1, 2007, by and between the Financing Authority and the 2007 Office
3 Building Bond Trustee, relating to the 2007 Office Building Bonds.
- 4 24. 2007 Series A Bonds means the Stockton Public Financing Authority
5 Variable Rate Demand Lease Revenue Bonds, 2007 Series A (Building Acquisition Financing
6 Project), issued on November 29, 2007, in the original aggregate principal amount of
7 \$36,500,000.
- 8 25. 2007 Series B Bonds means the Stockton Public Financing Authority
9 Taxable Variable Rate Demand Lease Revenue Bonds, 2007 Series B (Building Acquisition
10 Financing Project), issued on November 29, 2007, in the original aggregate principal amount of
11 \$4,270,000.
- 12 26. 2009 Golf Course/Park Bond Trustee means Wells Fargo as the
13 indenture trustee under the 2009 Golf Course/Park Bonds Indenture, or any successor indenture
14 trustee thereunder.
- 15 27. 2009 Golf Course/Park Bonds means the Stockton Public Financing
16 Authority Lease Revenue Bonds, 2009 Series A (Capital Improvement Projects), issued on
17 September 9, 2009, in the original aggregate principal amount of \$35,080,000.
- 18 28. 2009 Golf Course/Park Bonds Indenture means the Indenture of Trust,
19 dated as of September 1, 2009, by and between the Financing Authority and the 2009 Golf
20 Course/Park Bond Trustee, relating to the 2009 Golf Course/Park Bonds.
- 21 29. 400 E. Main Office Building Property means the office building located
22 at 400 E. Main Street in the City.
- 23 30. AB 506 means Assembly Bill 506, codified at California Government
24 Code 53760 *et seq.*
- 25 31. Additional Tax Increment Revenues has the meaning set forth in the
26 definition of Arena Lease Back Transaction.
- 27 32. Administrative Claim means the costs or expenses of administration of
28 the Chapter 9 Case not already paid by the City, allowed under section 503(b) and entitled to

1 priority under section 507(a)(2) to the extent made applicable in Chapter 9: (i) which the City
2 agrees is an Allowed administrative expense; or (ii) which the Bankruptcy Court determines is an
3 Allowed administrative expense. The City's consent to the Bankruptcy Court adjudicating
4 Administrative Claim status is given without the City in any way consenting or agreeing that
5 Claims for postpetition obligations of the City are or would be entitled to status as Administrative
6 Claims as "the actual necessary costs and expenses of preserving the estate" under section 503(b),
7 and the City reserves its right to maintain that such Claims would instead constitute Other
8 Postpetition Claims.

9 33. Allowed means,

10 (a) with reference to any Claim, a Claim that

11 (i) has been listed on the list of creditors filed by the City, as
12 such list may be amended from time to time pursuant to Bankruptcy Rule 1009; is not listed as
13 unliquidated, contingent or disputed; and for which no contrary proof of claim has been filed
14 (subject to objection as set forth in the next subsection);

15 (ii) is asserted in a proof of claim filed in compliance with
16 section 501 and any applicable orders of the Bankruptcy Court or listed in the list of creditors
17 filed by the City and as to which: (A) no objection has been, or subsequently is, filed within the
18 deadline established pursuant to Section X(A) of the Plan (as such deadline may be extended by
19 the Bankruptcy Court upon application of the City from time to time); (B) the Bankruptcy Court
20 has entered a Final Order allowing all or a portion of such Claim (but only in the amount so
21 allowed); or (C) the Bankruptcy Court has entered a Final Order under section 502(c) estimating
22 the amount of the Claim for purposes of allowance;

23 (iii) is subject to a stipulation between the City and the holder of
24 such Claim providing for the allowance of such Claim;

25 (iv) is deemed "Allowed" pursuant to this Plan;

26 (v) is designated as "Allowed" in a pleading entitled
27 "Designation Of Allowed Claims" (or a similar title of the same import) filed with the
28 Bankruptcy Court by the City on or after the Effective Date; or

(b) with reference to any Administrative Claim or Other Postpetition Claim, as to which the Bankruptcy Court has entered a Final Order allowing all or a portion of such Administrative Claim or Other Postpetition Claim (but only in the amount so allowed).

34. Ambac means Ambac Assurance Corporation, a Wisconsin stock insurance corporation.

35. Ambac Effective Date means the first Business Day following the day on which all the conditions contained in section 5.1 of the Ambac Settlement Agreement have either occurred or been expressly waived by the parties thereto.

36. Ambac Insurance Policy means the Financial Guaranty Insurance Policy No. 21154BE issued by Ambac in connection with the Fire/Police/Library Lease Back Transaction, which insures the 2003 Fire/Police/Library Certificates executed and delivered by the 2003 Fire/Police/Library Certificates Trustee to fund affordable housing projects in the City.

37. Ambac Settlement Agreement means the Stipulation and Settlement Agreement, dated as of February 26, 2013, by and among the City, the Financing Authority, the 2003 Fire/Police/Library Certificates Trustee, and Ambac, which is attached as Exhibit A to the Declaration of Robert Deis in Support of the City of Stockton's Motion Under Bankruptcy Rule 9019 for Approval of Its Settlement with Ambac Assurance Corporation, filed in the Chapter 9 Case on February 26, 2013 [Dkt. No. 725].

38. Arena means that property described as Parcel 4, as shown on the Parcel Map filed for record in the office of the Recorder of the County of San Joaquin, State of California, on March 4, 2003, in Book 23 of Maps, page 15, and the Arena located thereon, an indoor facility capable of hosting events such as ice hockey, indoor football, indoor soccer, concerts, boxing events, rodeos, and other such indoor events, and located at 248 West Fremont Street in downtown Stockton.

39. Arena Claims of the 2004 Arena Bond Trustee/NPFG means the Claims arising in connection with the Arena Lease Back Transaction (which claims are asserted by the 2004 Arena Bond Trustee at the direction of NPFG (as the insurer of the 2004 Arena Bonds) as a result of the assignment by the Successor Agency of all of its rights under the Arena Lease Out

1 and the Arena Lease Back to the 2004 Arena Bond Trustee), as modified by the NPPG
2 Settlement. The Arena Claims of the 2004 Arena Bond Trustee/NPPG do not include any claims
3 arising out of non-payment of the 2004 Arena Bonds as all such claims are claims against the
4 Successor Agency and are not obligations of the City (except to the extent specifically provided
5 under the terms of the NPPG Settlement).

6 40. Arena Lease Back means that certain Lease Agreement, dated as of
7 March 1, 2004, pursuant to which the Successor Agency leased the Arena to the City.

8 41. Arena Lease Back Transaction means, collectively, all transactions
9 memorialized in, among other things, the 2004 Arena Bonds, Arena Lease Out, and the Arena
10 Lease Back, and all related documents in connection therewith.

11 42. Arena Lease Out means that certain Site Lease, dated as of March 1,
12 2004, pursuant to which the City leased the Arena to the Successor Agency.

13 43. Arena Pledge Agreement means that certain Pledge Agreement, dated as
14 of March 1, 2004, between the City, as pledgor, and the Successor Agency, as pledgee, pursuant
15 to which the City pledged certain incremental tax revenues expected to be collected from the
16 West End Urban Renewal Project No. 1.

17 44. Assured Guaranty means, collectively, Assured Guaranty Municipal
18 Corp. and Assured Guaranty Corp.

19 45. Assured Guaranty Settlement means the settlement among the City and
20 Assured Guaranty relating to the Office Building Lease Back Transaction and the Pension
21 Obligation Bonds, the terms of which settlement are memorialized in the Assured Guaranty
22 Settlement Documents.

23 46. Assured Guaranty Settlement Documents means the documents
24 implementing the Assured Guaranty Settlement, copies of which documents are annexed as
25 Collective Exhibit 1 to the Plan Supplement.

26 47. Ballot means the ballot(s), in the form(s) approved by the Bankruptcy
27 Court in the Plan Solicitation Order accompanying the Disclosure Statement and provided to each
28 holder of a Claim entitled to vote to accept or reject this Plan.

48. Bankruptcy Code means title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 9 Case.

49. Bankruptcy Court means the United States Bankruptcy Court for the Eastern District of California, Sacramento Division, or such other court that lawfully exercises jurisdiction over the Chapter 9 Case.

50. Bankruptcy Rules means the Federal Rules of Bankruptcy Procedure, as amended from time to time, as applicable to the Chapter 9 Case, together with the local rules of the Bankruptcy Court applicable to the Chapter 9 Case. Unless otherwise indicated, references in this Plan to "Bankruptcy Rule _____" are to the specifically identified rule of the Federal Rules of Bankruptcy Procedure.

51. Bar Date means the applicable date by which a particular proof of claim must be filed, as established by the Bankruptcy Court.

52. BEDI means the Brownfields Economic Development Initiative.

53. BEDI Grant means the award by HUD of \$1,212,807 in BEDI grant funds for costs chargeable to the City's fiscal year 2003 BEDI award for the Downtown Stockton Waterfront Project, the award of which is contingent upon the City's compliance with the terms set forth in that certain letter dated May 7, 2014, from Yolanda Chávez, Deputy Assistant Secretary for Grant Programs, HUD, to the Honorable Anthony Silva.

54. Business Day means a day other than a Saturday, a Sunday, or any other day on which banking institutions in New York, New York, are required or authorized to close by law or executive order.

55. CalPERS means the California Public Employees' Retirement System.

56. CalPERS Pension Plan means the pension plan between CalPERS and the City, dated as of September 1, 1944, as amended (CalPERS ID 6373973665).

57. CalPERS Pension Plan Participants means those current and former City employees and their survivors and other dependents who are the beneficiaries of the CalPERS Pension Plan.

- 1 58. Cash means cash and cash equivalents, including withdrawable bank
2 deposits, wire transfers, checks, and other similar items.
- 3 59. Chapter 9 Case means the case under chapter 9 of the Bankruptcy Code
4 commenced by the City, styled *In re City of Stockton, California*, Case No. 2012-32118, currently
5 pending in the Bankruptcy Court.
- 6 60. City means the City of Stockton, California, the debtor in the Chapter 9
7 Case.
- 8 61. City Council means the duly elected legislative body of the City.
- 9 62. CJPRMA means California Joint Powers Risk Management Authority.
- 10 63. Claim has the meaning set forth in section 101(5).
- 11 64. Class means any group of Claims classified herein pursuant to
12 section 1123(a).
- 13 65. Confirmation Date means the date on which the Clerk of the Bankruptcy
14 Court enters the Confirmation Order on the docket of the Bankruptcy Court.
- 15 66. Confirmation Hearing means the hearing to be conducted by the
16 Bankruptcy Court regarding confirmation of this Plan, as such hearing may be adjourned,
17 reconvened or continued from time to time.
- 18 67. Confirmation Order means the order of the Bankruptcy Court confirming
19 this Plan pursuant to section 943.
- 20 68. Construction Agreement means that certain "Agreement Regarding
21 Construction Costs" dated as of April 29, 2008, among SCC 16, the City, and the Successor
22 Agency, relating to the City's obligation to reimburse SCC 16 for construction costs paid by
23 SCC 16 that the City was otherwise liable to pay, for the construction of improvements to certain
24 premises located in the Edmund S. Coy Parking Structure leased by SCC 16.
- 25 69. Contract for Loan Guarantee means (i) that certain Contract of Loan
26 Guarantee Assistance Under Section 108 of the Housing and Community Development Act of
27 1974, as amended, 42 U.S.C. §5308, dated December 27, 2000, by and between the City, as
28 borrower, and HUD, as guarantor, for two promissory notes issued by the City both numbered B-

1 98-MC-06-0026; (ii) that certain Contract of Loan Guarantee Assistance Under Section 108 of the
2 Housing and Community Development Act of 1974, as amended, 42 U.S.C. § 5308, dated
3 December 27, 2000, by and between the City, as borrower, and HUD, as guarantor, for a
4 promissory note issued by the City numbered B-98-MC-06-0026-A; and (iii) that certain Contract
5 of Loan Guarantee Assistance Under Section 108 of the Housing and Community Development
6 Act of 1974, as amended, 42 U.S.C. § 5308, dated March 2, 2006, by and between the City, as
7 borrower, and HUD, as guarantor, for a promissory note issued by the City numbered B-03-MC-
8 06-0036.

9 70. Convenience Class Claim means any Allowed Claim that is greater than
10 \$0.00 in Allowed amount and less than or equal to \$100 in Allowed amount or irrevocably
11 reduced to \$100 in Allowed amount at the election of the holder of the Allowed Claim as
12 evidenced by the Ballot submitted by such holder; *provided, however*, that an Allowed Claim
13 may not be subdivided into multiple Claims of \$100 or less for purposes of receiving treatment as
14 a Convenience Class Claim.

15 71. DBW means the California Department of Boating and Waterways, now
16 the Boating and Waterways division of the Department of Parks and Recreation.

17 72. DBW Settlement Agreement means the agreement implementing the
18 DBW settlement between the City and DBW, annexed as Exhibit 4 to the Supplemental Plan
19 Supplement and annexed as an exhibit to the Second Supplemental Plan Supplement.

20 73. Dexia means Dexia Crédit Local, a banking corporation duly organized
21 and existing under the laws of the Republic of France, acting through its New York branch.

22 74. Disallowed means a Claim or portion thereof that: (i) has been disallowed
23 by a Final Order of the Bankruptcy Court; (ii) has been listed by the City in its list of creditors, as
24 it may be amended from time to time in accordance with Bankruptcy Rule 1009, as in the amount
25 of \$0.00, contingent, disputed, or unliquidated, and as to which no proof of claim has been filed
26 by the applicable deadline or deemed timely filed pursuant to any Final Order of the Bankruptcy
27 Court; (iii) as to which the holder thereof has agreed to be equal to \$0.00 or to be withdrawn,
28 disallowed or expunged; or (iv) has not been listed in the list of creditors and as to which no proof

1 of claim has been filed by the applicable deadline or deemed timely filed pursuant to a Final
2 Order of the Bankruptcy Court.

3 75. Disclosure Statement means the disclosure statement, and all exhibits and
4 schedules incorporated therein, that relates to this Plan and was approved by the Bankruptcy
5 Court pursuant to section 1125 in an order filed on November 22, 2013, as the same may be
6 amended, modified, or supplemented in accordance with the Bankruptcy Code.

7 76. Disputed Claim means any Claim or portion thereof that has not become
8 Allowed and that is not Disallowed. In the event that any part of a Claim is a Disputed Claim,
9 except as otherwise provided in this Plan, such Claim shall be deemed a Disputed Claim in its
10 entirety for purposes of distribution under this Plan unless the City otherwise agrees in writing in
11 its sole discretion. Without limiting the foregoing, a Claim that is the subject of a pending
12 application, motion, complaint, objection, or any other legal proceeding seeking to disallow,
13 limit, reduce, subordinate, or estimate such Claim shall be deemed to be a Disputed Claim.

14 77. Edmund S. Cox Parking Structure means the parking structure located at
15 N. Hunter Street and E. Channel Street in the City.

16 78. Effective Date means the first Business Day after the Confirmation Date
17 on which the conditions specified in Section XIII of the Plan have been satisfied or waived.

18 79. Eligibility Contest means, collectively, the trial on the City's eligibility to
19 be a debtor under Chapter 9 of the Bankruptcy Code and all ancillary and related pleadings,
20 discovery, hearings, and actions.

21 80. Excluded Party means each or any of the City, NPGF, Assured
22 Guaranty, Ambac, the Indenture Trustee in all its capacities (except in its capacity as the 2009
23 Golf Course/Park Bond Trustee), and the respective Related Persons of each of the foregoing.

24 81. Events Center Project has the meaning set forth in the definition of Arena
25 Lease Back Transaction.

26 82. Final Order means a judgment, order, ruling, or other decree issued and
27 entered by the Bankruptcy Court or by any state or other federal court or other tribunal having
28 jurisdiction over the subject matter thereof which judgment, order, ruling, or other decree has not

1 been reversed, stayed, modified, or amended and as to which: (i) the time to appeal or petition for
2 review, rehearing, or certiorari has expired and no appeal or petition for review, rehearing, or
3 certiorari is then pending; or (ii) any appeal or petition for review, rehearing, or certiorari has
4 been finally decided and no further appeal or petition for review, rehearing, or certiorari can be
5 taken or granted.

6 83. Financing Authority means the Stockton Public Financing Authority, a
7 joint powers authority organized and existing under the laws of the state of California and that
8 certain Joint Exercise of Powers Agreement dated as of June 16, 1990, by and between the City
9 and the Successor Agency.

10 84. Fire/Police/Library Lease Back means that certain Lease Agreement,
11 dated as of June 1, 2003, pursuant to which the Financing Authority leased the
12 Fire/Police/Library Properties to the City.

13 85. Fire/Police/Library Lease Back Transaction means, collectively, all
14 transactions memorialized in, among other things, the 2003 Fire/Police/Library Certificates
15 Reimbursement Agreement, the 2003 Fire/Police/Library Certificates, the Fire/Police/Library
16 Lease Out, the Fire/Police/Library Lease Back, and all related documents in connection therewith.

17 86. Fire/Police/Library Lease Out means that certain Site and Facility Lease,
18 dated as of June 1, 2003, pursuant to which the City leased the Fire/Police/Library Properties to
19 the Financing Authority.

20 87. Fire/Police/Library Lease Out Assignment Agreement means the
21 Assignment Agreement by and between the Financing Authority and the 2003 Fire/Police/Library
22 Certificates Trustee, in substantially the form annexed to the Ambac Settlement Agreement as
23 Exhibit A (and referred to in the Ambac Settlement Agreement as the "Site Lease Assignment
24 Agreement").

25 88. Fire/Police/Library Properties means, collectively, the City's Main
26 Police Facility, located at 22 E. Market Street; the Maya Angelou Southeast Branch Library,
27 located at 2324 Pock Lane; Fire Station No. 1, located at 1818 Fresno Avenue; Fire Station No. 3,
28 located at 3499 Manthey Road; and Fire Station No. 14, located at 3019 McNabb Street.

89. Fourth Floor Lease of 400 E. Main means that certain 400 East Main

Street Office Lease dated as of June 1, 2012, between Main Street Stockton LLC and The City of Stockton.

90. Franklin means, collectively, Franklin Advisers, Inc., Franklin High Yield Tax-Free Income Fund, and Franklin California High Yield Municipal Fund.

91. General Fund means the City's chief operating fund, which is used to account for all financial resources except those required to be accounted for in another fund (such as the Restricted Funds).

92. General Liability Claim means a tort or contract Claim filed against the City pursuant to the Government Claims Act, California Government Code section 810 *et seq.*

93. General Unsecured Claim means any unsecured Claim that is not (i) an Administrative Claim; (ii) a General Liability Claim; or (iii) a Workers Compensation Claim; but excluding the unsecured portion, if any, of the claims of the holders of the Claims in Classes 1A and 1B (Ambac), 2, 3, and 4 (NPPG), and 5 and 6 (Assured Guaranty), which unsecured claims, if any, will be paid in accordance with the various settlements with such holders.

94. Golf Course/Park Claims means, collectively, the Golf Course/Park Secured Claim and the Golf Course/Park Unsecured Claim. The Allowed amount of the Golf Course/Park Claims is \$36,603,625.93.

95. Golf Course/Park Collateral means the right of the 2009 Golf Course/Park Bond Trustee to take possession of the Golf Course/Park Properties through September 1, 2038, or such other date as is determined by the Bankruptcy Court to be the termination date for such possession. The Bankruptcy Court determined the value of the Golf Course/Park Collateral on July 8, 2014.

96. Golf Course/Park Lease Back means that certain Lease Agreement, dated as of September 1, 2009, pursuant to which the Financing Authority leased the Golf Course/Park Properties to the City.

1 97. Golf Course/Park Lease Back Rental Payments means the semi-annual
2 rental payments in varying amounts that the City agreed to make as tenant under the Golf
3 Course/Park Lease Back.

4 98. Golf Course/Park Lease Back Transaction means, collectively, all
5 transactions memorialized in, among other things, the 2009 Golf Course/Park Bonds, the Golf
6 Course/Park Lease Out, and the Golf Course/Park Lease Back, and all related documents in
7 connection therewith.

8 99. Golf Course/Park Lease Out means that certain Site and Facility Lease,
9 dated as of September 1, 2009, pursuant to which the City leased the Golf Course/Park Properties
10 to the Financing Authority.

11 100. Golf Course/Park Properties means, collectively, Oak Park, the Van
12 Buskirk Golf Course, and the Swenson Golf Course.

13 101. Golf Course/Park Secured Claim means the Secured Claim of the 2009
14 Golf Course/Park Bond Trustee arising from the recharacterization of the Golf Course/Park Lease
15 Back Transaction as a secured financing transaction pursuant to the Partial Judgment. The
16 Allowed amount of the Golf Course/Park Secured Claim as of the date of confirmation of the
17 Plan is the value of the Golf Course/Park Collateral, which the Bankruptcy Court determined to
18 be \$4,052,000 at the continued Confirmation Hearing held on July 8, 2014. The Bankruptcy
19 Court valued the component parts as follows: the possessory interest of (a) Swenson Golf
20 Course: \$1,572,500; (b) Van Buskirk Golf Course: \$658,750; (c) Van Buskirk Community
21 Center: \$1,600,000; and (d) Oak Park: \$221,000.²

22 102. Golf Course/Park Unsecured Claim means the Class 12 unsecured Claim
23 of the 2009 Golf Course/Park Bond Trustee arising from the recharacterization of the Golf
24 Course/Park Lease Back Transaction as a secured financing transaction pursuant to the Partial
25 Judgment. The Allowed amount of the Golf Course/Park Unsecured Claim as of the date of
26

27
28 ² At the July 8 hearing, the Court rounded the sum of these values (\$4,052,250) to \$4,052,000.

confirmation of the Plan is equal to: (i) \$36,603,625.93 minus (ii) the Allowed amount of the Golf Course/Park Secured Claim.

103. HUD means the U.S. Department of Housing and Urban Development.

104. Impaired means a Claim or interest that is impaired within the meaning of section 1124.

105. Indenture Trustee means the 2003 Fire/Police/Library Certificates Trustee, the 2004 Arena Bond Trustee, the 2004 Parking Bond Trustee, the 2006 SEB Bond Trustee, the 2007 Office Building Bond Trustee, the 2009 Golf Course/Park Bond Trustee, and/or the Pension Obligation Bonds Trustee, as the context requires.

106. Insurance Policies means the 2004 Arena Bond Insurance Policy, the 2004 Parking Bond Insurance Policy, the 2006 SEB Bond Insurance Policy, the 2007 Office Building Bond Insurance Policy, and the Ambac Insurance Policy.

107. Insured Portion means that portion of an Allowed Workers Compensation Claim or an Allowed General Liability Claim that is covered by one or more of the excess risk-sharing pools of which the City is a member, up to the amount of the policy limits, including any excess coverage policies.

108. Leave Buyout Claim means a Claim of a former City employee on account of unpaid sick leave or other compensation or reimbursement due upon such employee's retirement or other separation from City service.

109. Marina Construction Loan means that certain Stockton Waterfront Marina \$13,300,000 Loan Contract, dated as of June 21, 2004.

110. Marina Construction Loan Agreement means the amended Marina Construction Loan.

111. Marina Project has the meaning set forth in the Marina Construction Loan Agreement.

112. Market Street Garage means the structure located within the City's Central Parking District on Market Street between Sutter and California Streets.

113. New 400 E. Main Lease means the lease to the City of a portion of the 400 E. Main Office Building Property, a copy of which lease is included in the Assured Guaranty Settlement Documents.

114. Notice of the Effective Date shall have the meaning ascribed to such phrase in Section XIV(E) of the Plan.

115. NPFG means National Public Finance Guarantee Corporation, a New York stock insurance corporation.

116. NPFG Arena Settlement means the settlement between the City and NPFG relating to the Arena Lease Back Transaction, the terms of which settlement are memorialized in the NPFG Arena Settlement Documents.

117. NPFG Arena Settlement Documents means the documents implementing the NPFG Arena Settlement, copies of which documents are annexed as Collective Exhibit 2 to the Plan Supplement.

118. NPFG Parking Settlement means the settlement between the City and NPFG relating to the Parking Structure Lease Back Transaction, the terms of which settlement are memorialized in the NPFG Parking Settlement Documents.

119. NPFG Parking Settlement Documents means the documents implementing the NPFG Parking Settlement, copies of which documents are annexed as Collective Exhibit 3 to the Plan Supplement.

120. NPFG Settlement means, collectively, the NPFG Arena Settlement, the NPFG Parking Settlement, and the NPFG/SEB Settlement.

121. NPFG/SEB Settlement means the settlement between the City and NPFG relating to the SEB Lease Back Transaction, the terms of which settlement are embodied herein.

122. Oak Park means the public park of approximately 61.2 acres in the City, bounded on the east by Union Pacific railroad tracks, on the north by East Fulton Street, on the south by East Alpine Street, and on the west by North Sutter and Alvarado Streets.

123. Office Building Claims of the 2007 Office Building Bond Trustee/Assured Guaranty means the Claims arising in connection with the Office Building

1 Lease Back Transaction, which Claims are asserted by the 2007 Office Building Bond Trustee at
2 the direction of Assured Guaranty as a result of the assignment by the Financing Authority of all
3 of its rights under the Office Building Lease Out and the Office Building Lease Back to the 2007
4 Office Building Bond Trustee.

5 124. Office Building Lease Back means that certain Lease Agreement, dated as
6 of November 1, 2007, pursuant to which the Financing Authority leased the 400 E. Main Office
7 Building Property to the City.

8 125. Office Building Lease Back Transaction means, collectively, all
9 transactions memorialized in, among other things, the 2007 Office Building Bonds, the Office
10 Building Lease Out, and the Office Building Lease Back, and all related documents in connection
11 therewith.

12 126. Office Building Lease Out means that certain Site and Facility Lease,
13 dated as of November 1, 2007, pursuant to which the City leased the 400 E. Main Office Building
14 Property to the Financing Authority.

15 127. Office Building Standby Agreement means that certain Standby Bond
16 Purchase Agreement, dated as of November 29, 2007, entered into by the City, the Financing
17 Authority, and Dexia.

18 128. Other Postpetition Claims means Claims asserted against the City for
19 services rendered to, or goods delivered to, or obligations incurred by, the City after the Petition
20 Date that do not constitute Administrative Claims.

21 129. Parking Authority means the Parking Authority of the City of Stockton, a
22 public body corporate and politic, organized and existing under and by virtue of the laws of the
23 State of California.

24 130. Parking Structure Claims of the 2004 Parking Bond Trustee/NPFG
25 means the Claims arising in connection with the Parking Structure Lease Back Transaction, as
26 modified by the NPFG Settlement. The Parking Structure Claims of the 2004 Parking Bond
27 Trustee/NPFG do not include any claims arising out of non-payment of the 2004 Parking Bonds,
28 as all such claims are non-recourse claims against the Financing Authority secured only by the

1 assignment by the Financing Authority of the Parking Structure Lease Back Rental Payments and
2 are not obligations of the City (except to the extent specifically provided under the terms of the
3 NPPG Settlement).

4 131. Parking Structure Lease Back means that certain Lease Agreement,
5 dated as of September 1, 2004, pursuant to which the Financing Authority leased the Parking
6 Structure Properties to the City.

7 132. Parking Structure Lease Back Transaction means, collectively, the
8 transactions memorialized in the 2004 Parking Bopds, the Parking Structure Lease Out, and the
9 Parking Structure Lease Back.

10 133. Parking Structure Lease Out means that certain Site and Facility Lease,
11 dated as of June 1, 2004, pursuant to which the City leased the Parking Structure Properties to the
12 Financing Authority.

13 134. Parking Structure Properties means, collectively, the Edmund S. Coy
14 Parking Structure, the Stockton Events Center Parking Structure, and the Market Street Garage.

15 135. Partial Judgment means the Partial Judgment in Favor of Plaintiffs
16 entered on April 21, 2014 in the Recharacterization Adversary Proceeding [Adv. Dkt. No. 56].

17 136. Pension Obligation Bonds means the City of Stockton 2007 Taxable
18 Pension Obligation Bonds issued on April 5, 2007 in the aggregate principal amount of
19 \$125,310,000 pursuant to articles 10 and 11 (commencing with section 53570) of chapter 3 of
20 part 1 of division 2 of title 5 of the Government Code of the State of California and the Pension
21 Obligation Bonds Indenture.

22 137. Pension Obligation Bonds Claims means the Claims arising in
23 connection with the Pension Obligation Bonds.

24 138. Pension Obligation Bonds Indenture means that certain Indenture of
25 Trust, dated as of April 1, 2007, by and between the City and the Pension Obligation Bonds
26 Trustee.

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1 139. Pension Obligation Bonds Insurance Policy means that certain
2 Municipal Bond Insurance Policy No. 208382-N issued by Assured Guaranty, as successor to
3 Financial Security Assurance, with respect to the Pension Obligation Bonds.

4 140. Pension Obligation Bonds Trustee means Wells Fargo, as indenture
5 trustee under the Pension Obligation Bonds Indenture, or any successor indenture trustee
6 thereunder.

7 141. Petition Date means June 28, 2012.

8 142. Plan means this First Amended Plan of Adjustment of Debts of City of
9 Stockton, California (November 15, 2013), together with any exhibits (including any Plan
10 Supplement and exhibits annexed to any Plan Supplement), each in their present form or as they
11 may be altered, amended or modified from time to time in accordance with the provisions of this
12 Plan, the Confirmation Order, the Bankruptcy Code, and the Bankruptcy Rules.

13 143. Plan Document means any agreement or instrument contemplated by, or
14 to be entered into pursuant to, this Plan, that is in form and substance acceptable to the City, has
15 been duly and validly executed and delivered, or deemed executed by the parties thereto, and for
16 which all conditions to its effectiveness have been satisfied or waived.

17 144. Plan Solicitation Order means the Order Approving (1) Modified
18 Disclosure Statement with Respect to First Amended Plan for the Adjustment of Debts of City of
19 Stockton (November 15, 2013); (2) Setting Confirmation Procedures; and (3) Scheduling Filing
20 Dates and the Confirmation Hearing [Dkt. No. 1230], entered on November 22, 2013, by which
21 the Bankruptcy Court approved the Disclosure Statement as containing adequate information for
22 the purpose of dissemination and solicitation of votes on and confirmation of this Plan and
23 established certain rules, deadlines, and procedures for the solicitation of votes with respect to
24 and the balloting on this Plan.

25 145. Plan Supplement means the Plan Supplement in Connection with the First
26 Amended Plan for the Adjustment of Debts of City of Stockton, California (November 15, 2013)
27 [Dkt. No. 1236], filed on January 27, 2014, which includes drafts reflecting the material
28 economic terms of the Assured Guaranty Settlement Documents, the NPFG Arena Settlement

Documents, and the NPFPG Parking Settlement Documents. The Supplemental Plan Supplement includes updated drafts of these documents as well as additional documents, as will the Second Supplemental Plan Supplement.

146. Ports License Agreement means that certain "Events Center Ball Park License Agreement" dated as of March 2, 2004, between the City and 7th Inning Stretch, LLC regarding the terms and conditions upon which the Ports may use the Banner Island Ballpark located next to the Arena.

147. Ports means, collectively, the professional minor-league baseball team known as the Stockton Ports and 7th Inning Stretch, LLC.

148. Ports Settlement means the settlement between the City and the Ports regarding the Claims of the Ports and the terms of the City's financial support of the Ports. The terms of the Ports Settlement are implemented by the Ports Settlement Documents.

149. Ports Settlement Documents mean the documents implementing the Ports Settlement, which as of the date hereof have not been finalized. However, the term sheet, which sets forth the material terms of the Ports Settlement, is annexed as an exhibit to the Second Supplemental Plan Supplement.

150. Pre-Confirmation Date Claims means all Claims against the City that arose prior to the Confirmation Date.

151. Price Claims mean the Claims of the Price Judgment Creditors, who filed a proof of claim in the Chapter 9 Case in the amount of \$1,423,164.

152. Price Judgment Creditors mean Richard Price and five other low-income individuals who were displaced from single-room-occupancy housing units in downtown Stockton in connection with the City's code-enforcement activities, and the Interfaith Council of San Joaquin (formerly Stockton Metro Ministry Inc.), who collectively filed an action against the City, the Successor Agency, and other parties on May 2, 2002, captioned as *Price, et al. v. City of Stockton, et al.*, U.S. District Court for the Eastern District of California, case no. 2:02-cv-00065-LKK-KJM.

153. Price Settlement means the settlement between the City and the Price Judgment Creditors regarding the Price Claims. The terms of the Price Settlement are summarized by the Price Settlement Documents.

154. Price Settlement Documents mean the documents implementing the Price Settlement, copies of which are annexed as Exhibit 5 to the Supplemental Plan Supplement.

155. Professional Claim means a Claim required to be filed pursuant to Section II(B) of the Plan for approval of amounts, if any, to be paid after the Effective Date for services or expenses in the Chapter 9 Case or incident to this Plan.

156. Recharacterization Adversary Proceeding means the adversary proceeding that the 2009 Golf Course/Park Bond Trustee, Franklin High Yield Tax-Free Income Fund, and Franklin California High Yield Municipal Fund commenced by filing a Complaint for Declaratory Relief against the City in the Bankruptcy Court. [Dkt. No. 1181, commencing Adversary Case 13-2315].

157. Rejection Motion means the motion or motions to be filed by the City pursuant to section 365(a) by which the City shall seek approval and authorization for the rejection of such executory contracts and unexpired leases as shall be identified in such motion(s).

158. Related Persons means, with respect to any Person, such Person's predecessors, successors, assigns and present and former Affiliates (whether by operation of law or otherwise) and subsidiaries, and each of their respective current and former officers, directors, principals, employees, shareholders, members (including ex officio members), partners, agents, financial advisors, attorneys, accountants, investment bankers, investment advisors, consultants, representatives, and other professionals, and any Person claiming by or through any of them.

159. Released Party means each or any of NPPG, Assured Guaranty, Ambac, the Indenture Trustee, and the respective Related Persons of each of the foregoing.

160. Restricted Funds means the approximately 200 special purpose and enterprise funds administered by the City, the use of which is restricted by, among other things, grants, federal law, the California Constitution, or other California law, such that the assets of the Restricted Funds may not lawfully be used to pay obligations of the General Fund, but which can

1 be used to pay the Pension Obligation Bonds and the Restricted Revenue Bond and Note Payable
2 Obligations.

3 161. Restricted Revenue Bond and Note Payable Obligations means,
4 collectively, (i) the City of Stockton Revenue Certificates of Participation 1998 Series A
5 (Wastewater System Project), the City of Stockton Certificates of Participation 2003 Series A
6 (Wastewater System Project), the Stockton Public Financing Authority 2005 Water Revenue
7 Bonds, Series A (Water System Capital Improvement Project), Stockton Public Financing
8 Authority Water Revenue Bonds, Series 2009A (Delta Water Supply Project) & Taxable Build
9 America Bonds Series 2009 B (Delta Water Supply Project), Stockton Public Financing Authority
10 Variable Rate Demand Water Revenue Bonds, Series 2010A (Delta Water Supply Project),
11 including all installment purchase agreements, security agreements, trust indentures,
12 reimbursement agreements, fee letters, and other agreements with respect thereto to which the
13 City is a party and which are payable from and secured by special and restricted sources of
14 revenues; and (ii) the City's obligations under that certain Installment Purchase Agreement, dated
15 as of May 1, 2002, by and between the City and California Statewide Communities Development
16 Authority, to make installment payments, from certain revenues of the City's water system, that
17 relate to California Statewide Communities Development Authority Water and Wastewater
18 Revenue Bonds (Pooled Financing Program), Series 2002A.

19 162. Retiree Health Benefit Claim means a Claim by a former City employee
20 or dependent on account of or in any way related to the City's postpetition reduction of its
21 contribution to health benefit payments to former City employees and dependents.

22 163. Retiree Health Benefit Claimant means a former City employee (or
23 dependent) who was eligible for retiree health benefits based on his or her collective bargaining
24 agreement at the time of retirement and: (i) who was receiving City retiree health benefits as of
25 June 30, 2012 (which includes any retiree who had waived coverage prior to that date but was
26 otherwise eligible, or any retiree who had exceeded the 15-year cap for under-65 retiree health
27 benefits, but who was eligible for a City retiree benefit for an over-65 retiree); or (ii) who retired
28 prior to July 1, 2012 with his or her last day on payroll having occurred on or before June 30,

2012; or (iii) who was a surviving spouse of a deceased retiree who was receiving retiree benefits on June 30, 2012.

164. Retirees Committee means the Official Committee of Retirees, appointed in the Chapter 9 Case on April 1, 2013 [Dkt. No. 846], by the Office of the United States Trustee pursuant to sections 1102(a)(1) and 1102(b)(1), as the membership thereof may have been reconstituted from time to time by the Office of the United States Trustee.

165. Retirees Settlement means the agreement between the City and the Retirees Committee by which the City agrees to propose a plan of adjustment containing the provisions set forth in the Retirees Settlement.

166. Rights of Action means any rights, claims, or causes of action owned by, accruing to, or assigned to the City pursuant to the Bankruptcy Code or pursuant to any contract, statute, or legal theory, including without limitation any rights to, claims, or causes of action for recovery under any policies of insurance issued to or on behalf of the City.

167. Risk Management Internal Service Fund means the fund established by the City to accumulate resources for interdepartmental charges expended on self insurance for General Liability Claims. The City also has other internal service funds.

168. Rust Omni means Rust Consulting/Omni Bankruptcy, the Ballot Tabulator in the Chapter 9 Case.

169. SCC 16 means Stockton City Center 16, LLC, a California limited liability company.

170. SCC 16 Claims means any Claim of SCC 16 arising out of the Construction Agreement.

171. SCC 16 Lease means that certain Master Lease dated February 26, 2008 between the City, as lessor, and SCC 16, as lessee, whereby the City subleased to SCC 16 a portion of that certain parcel of real property situated in Stockton commonly known as The Coy Parking Garage, and more particularly described in the Lease.

172. SCC 16 Promissory Note means that certain promissory note executed by the City in favor of SCC 16 pursuant to, and in accordance with, the Construction Agreement.

1 173. SCC 16 Settlement means the settlement, if any, memorialized in the SCC
2 Settlement Agreement.

3 174. SCC Settlement Agreement means that certain settlement agreement, if
4 any, among the City, the 2004 Parking Structure Bond Trustee, and SCC 16.

5 175. SEB Claims of the 2006 SEB Bond Trustee/NPFG means the Claims (if
6 any) arising under the SEB Lease Back or the SEB Lease Out.

7 176. SEB Lease Back means that certain Lease Agreement, dated as of
8 March 1, 2006, pursuant to which the Financing Authority leased the SEB Properties to the City.

9 177. SEB Lease Back Transaction means, collectively, the transactions
10 memorialized in the 2006 SEB Bonds, SEB Lease Out, and the SEB Lease Back.

11 178. SEB Lease Out means that certain Ground Lease, dated as of March 1,
12 2006, pursuant to which the City leased the SEB Properties to the Financing Authority.

13 179. SEB Properties means the Stewart/Eberhardt Building located at 22 East
14 Weber Avenue, in the City, and the adjacent public parking facility located at 15 North El Dorado
15 Street.

16 180. Second Supplemental Plan Supplement means the Second Supplemental
17 Plan Supplement in Connection with the First Amended Plan for the Adjustment of Debts of City
18 of Stockton, California, As Modified (August 8, 2014), to be filed by the City, which includes the
19 Assured Guaranty Settlement Documents, the NPFG Arena Settlement Documents, the NPFG
20 Parking Settlement Documents, the DBW Settlement Document, the Price Settlement Documents,
21 and the Thunder Settlement Documents as approved by the City Council by resolution dated
22 April 15, 2014, as well as the term sheet executed by the City and the Ports.

23 181. Secured Claim means a Claim that is secured, in whole or in part, (i) by a
24 lien that is not subject to avoidance or subordination under the Bankruptcy Code or applicable
25 non-bankruptcy law; or (ii) as a result of rights of setoff under section 553; but in any event only
26 to the extent of the value, determined in accordance with section 506(a), of the holder's interest in
27 the City's interest in property or to the extent of the amount subject to such setoff, as the case
28 may be.

1 182. SIR Claim Portion means the portion of a Workers Compensation Claim
2 or General Liability Claim subject to the City's self insurance retention. For any resolved
3 Workers Compensation Claim, the SIR Claim Portion is the first \$500,000. For any resolved
4 General Liability Claim, the SIR Claim Portion is the first \$1,000,000. The SIR Claim Portion is
5 an obligation of the City rather than an obligation of any excess risk-sharing pool of which the
6 City is a member.

7 183. Special Assessment and Special Tax Obligations means, collectively:

- 8 ▪ Stockton Public Financing Authority Reassessment Revenue Bonds
9 (Arch Road and Stockton Business Park Assessment Districts) Series
10 1998, including claims related to those certain:
 - 11 ○ Stockton Airport Business Park Ltd. Obligation Refunding
12 Improvement Bonds Project 84-1 Phase IV, Series 229 (Local
13 Obligation Bonds);
 - 14 ○ Stockton Airport Business Park Ltd. Obligation Refunding
15 Improvement Bonds Project 84-1 Phase V, Series 230 (Local
16 Obligation Bonds);
 - 17 ○ Stockton Airport Business Park Ltd. Obligation Refunding
18 Improvement Bonds Project 84-1 Phase I, Series 231 (Local
19 Obligation Bonds);
- 20 • City of Stockton Camera Estates Community Facilities District No.
21 2003-1 Special Tax Bonds, Series 2003;
- 22 ▪ City of Stockton Limited Obligation Improvement Bonds March
23 Lane/Holman Assessment District 2003-1;
- 24 • City of Stockton Limited Obligation Improvement Bonds Mosher
25 Assessment District 2003-02;
- 26 • City of Stockton Limited Obligation Improvement Bonds Waterford
27 Estates East Phase II Assessment District 2003-03;

- Stockton Public Financing Authority Refunding Revenue Bonds (West Eighth Street Reassessment District);
- City of Stockton South Stockton Community Facilities District No. 90-1 2005 Special Tax Refunding Bonds;
- Stockton Public Financing Authority Refunding Revenue Bonds (2005 Assessment Districts Refinancing) Series A Senior Lien Bonds and Series B Subordinate Lien Bonds:
 - City of Stockton Limited Obligation Refunding Bond Blossom Ranch Assessment District No. 93-1 (Reassessment and Refunding of 2005);
 - City of Stockton Limited Obligation Refunding Bond La Morada Assessment District No. 96-4 (Reassessment and Refunding of 2005);
 - City of Stockton Limited Obligation Refunding Bond Morada North Assessment District No. 2002-01 (Reassessment and Refunding of 2005);
 - City of Stockton Limited Obligation Refunding Bond Morada Ranch Assessment District No. 2000-01 (Reassessment and Refunding of 2005);
 - City of Stockton Limited Obligation Refunding Bond Waterford Estates East Assessment District No. 2002-03 (Reassessment and Refunding of 2005);
- City of Stockton Community Facilities District No. 90-2 (Brookside Estates) 2005 Special Tax Refunding Bonds;
- Stockton Public Financing Authority Revenue Bonds (Redevelopment Projects) 2006 Series A and Taxable Revenue Bonds (Housing Projects) 2006 Series C;

- City of Stockton Community Facilities District No. 1 (Weston Ranch) Special Tax Refunding Bonds, Series 2006;
- City of Stockton Spanos Park West Community Facilities District No. 2001-1 Special Tax Refunding Bonds, Series 2006;
- City of Stockton Community Facilities District No. 2006-1 (Riverbend) Special Tax Bonds, Series 2006;
- City of Stockton Community Facilities District No. 2006-3 (Northbrook) Woodside Improvement Area 1 Special Tax Bonds, Series 2007;
- City of Stockton Arch Road East Community Facilities District No. 99-02 2007 Special Tax Bonds;
- City of Stockton 2001 Combined Assessment District Refunding, 2001 Charter Way (86-4), North Stockton Interim Sewer (88-2), and Little John Creek (97-01) 2001 Limited Obligation Improvement Refunding Bonds;
- Stockton Public Financing Authority 2008 Refunding Revenue Bonds:
 - City of Stockton Limited Obligation Refunding Bonds, Reassessment District No. 91-1R (Local Obligation Bonds);
 - Stockton Public Financing Authority Communities Facilities District No. 90-4 (Spanos Park) Special Tax Refunding Bonds (Local Obligation Bonds); and
- All installment purchase agreements, security agreements, trust indentures, reimbursement agreements, fee letters, and other agreements with respect thereto to which the City is a party and which are payable from and secured by special and restricted sources of revenues.

184. SPOA means the Stockton Police Officers' Association.

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185. SPOA Claims means the Claims of members of the SPOA in the approximate amount of \$13 million included in and resolved under the SPOA MOU.

186. SPOA MOU means the Memorandum of Understanding between the City and the SPOA effective July 1, 2012, through June 30, 2014, as approved by the City, a copy of which is attached as Exhibit 5 to the Plan Supplement.

187. Stockton Events Center Parking Structure means the structure located at the intersection of Fremont and Van Buren streets in the City.

188. Successor Agency means the City, acting in its capacity as Successor Agency to the Redevelopment Agency of the City of Stockton following the dissolution of such agency. References to actions by the Successor Agency in the Plan incorporate references to actions taken and agreements entered into by the former Redevelopment Agency of the City of Stockton prior to its dissolution and the Successor Agency's succession in interest.

189. Supplemental Plan Supplement means the Supplemental Plan Supplement in Connection with the First Amended Plan for the Adjustment of Debts of City of Stockton, California (November 15, 2013) [Dkt. No. 1259], filed on February 10, 2014, which includes drafts reflecting the material economic terms of the Assured Guaranty Settlement Documents, the NPFPG Arena Settlement Documents, the NPFPG Parking Settlement Documents, the DBW Settlement Document, the Price Settlement Documents.

190. Swenson Golf Course means the property in the City located on approximately 219 acres at 6803 Alexandria Place.

191. Thunder Claims means the Claims arising in connection with the Thunder License Agreement, as modified by the Thunder Settlement.

192. Thunder License Agreement means that certain agreement dated as of March 2, 2004, titled "Team Lease for Stockton Events Center (Ice Hockey Team)" between the City and IFG-Stockton Franchise Group, Inc. as the same may have been amended from time to time, relating to the rights of the Stockton Thunder ice hockey team to use the facilities of the Arena.

193. Thunder Settlement means that certain settlement between the City and SC Hockey Franchise Corporation, as successor to IFG-Stockton Franchise Group, Inc., regarding the treatment under this Plan of the claims arising out of the Thunder License Agreement, the material terms of which agreement are set forth in the Thunder Settlement Term Sheet.

194. Thunder Settlement Documents means the documents implementing the Thunder Settlement, copies of which are annexed as an exhibit to the Second Supplemental Plan Supplement.

195. Thunder Settlement Term Sheet means that certain Term Sheet— Proposed Amendments to Team Lease for Stockton Events Center, dated as of September 18, 2013, a copy of which is attached as Exhibit E to the Disclosure Statement and incorporated by reference.

196. Unimpaired means a Claim that is not Impaired within the meaning of section 1124.

197. Uninsured Portion Claim means the amount in excess of the Insured Portion of an Allowed Workers Compensation Claim or an Allowed General Liability Claim that is covered by one or more of the excess risk-sharing pools of which the City is a member.

198. Unsecured Claim Payout Percentage means the percentage of the Allowed amount of General Unsecured Claims that will be paid to holders of Class 12 Claims, equal to the percentage paid on account of the Retiree Health Benefit Claims (unless the amount of the Retiree Health Benefit Claims changes, that percentage will be equal to 0.93578%, i.e., \$5,100,000 divided by \$545,000,000), or such other amount as is determined by the Bankruptcy Court before confirmation of this Plan to constitute a pro-rata payment on such other General Unsecured Claims; *provided, however*, the dollar amount to be paid on account of General Unsecured Claims other than the Retiree Health Benefit Claims on the Effective Date shall not exceed \$500,000. If the amounts to be paid exceed \$500,000, then such excess amounts shall be made in two equal annual installments on the first and second anniversary of the Effective Date, together with simple interest accruing from and after the Effective Date at 5% per annum. Such excess amounts may be prepaid at the option of the City.

1 199. Wells Fargo means Wells Fargo Bank, National Association, acting solely
2 in its role as 2003 Fire/Police/Library Certificates Trustee, the 2004 Arena Bond Trustee, the
3 2004 Parking Bond Trustee, the 2006 SEB Bond Trustee, the 2007 Office Building Bond Trustee,
4 the 2009 Golf Course/Park Bond Trustee, the Pension Obligation Bonds Trustee, as well as in its
5 role as trustee, fiscal agent or other like capacity with respect to certain of the Restricted Revenue
6 Bond and Note Payable Obligations and the Special Assessment and Special Tax Obligations.

7 200. Workers Compensation Claims means those Claims pursuant to
8 California workers compensation law (California Labor Code section 3200 *et seq.*) of current and
9 former City employees who have suffered an eligible injury while employed by the City

10 201. Workers Compensation Internal Service Fund means the fund
11 established by the City to accumulate resources for interdepartmental charges expended on self
12 insurance for Workers Compensation Claims.

13 B. Rules of Construction.

14 The following rules of construction apply to this Plan: (a) unless otherwise
15 specified, all references in this Plan to "sections" (lowercased) are references to a section of the
16 Bankruptcy Code; (b) unless otherwise specified, all references in this Plan to "Sections" and
17 "Exhibits" (uppercased) are to the respective Section in or Exhibit to this Plan, as the same may
18 be amended or modified from time to time; (c) the headings in this Plan are for convenience of
19 reference only and do not limit or otherwise affect the provisions of this Plan; (d) words denoting
20 the singular number include the plural number and vice versa; (e) the rules of construction set
21 forth in section 102 apply; (f) in computing any period of time prescribed or allowed by this Plan,
22 the provisions of Bankruptcy Rule 9006(a) apply; (g) any term used in capitalized form herein
23 that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules
24 shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as
25 the case may be; and (h) the words "herein," "hereof," "hereto," "hereunder," and others of
26 similar import refer to this Plan as a whole and not to an particular section, subsection, or clause
27 contained in this Plan.

C. Plan Supplement, Supplemental Plan Supplement, and Second Supplemental Plan Supplement.

On January 27 and February 10, respectively, the City electronically filed with the Bankruptcy Court and Rust Omni served in CD-ROM format by U.S. mail on all parties entitled to vote on the Plan the Plan Supplement [Dkt. No. 1236] and the Supplemental Plan Supplement [Dkt. No. 1259]. Further, the City will electronically file with the Bankruptcy Court and Rust Omni will serve in CD-ROM format by U.S. mail on all parties entitled to vote on the Plan the Second Supplemental Plan Supplement. The City has made (and in the case of the Second Supplemental Plan Supplement, will make) each of these documents electronically available on its website. The exhibits and schedules contained in these documents are incorporated into, and are a part of, the Plan as if set forth herein.

II. TREATMENT AND DEADLINE FOR THE ASSERTION OF ADMINISTRATIVE CLAIMS AND PROFESSIONAL CLAIMS

A. Treatment of Administrative Claims.

Except to the extent that the holder of an Allowed Administrative Claim agrees to a different treatment, the City or its agent shall pay to each holder of an Allowed Administrative Claim, in full satisfaction, release, and discharge of such Allowed Administrative Claim, Cash in an amount equal to such Allowed Administrative Claim on the later of (i) the Effective Date or (ii) the date on which such Claim becomes an Allowed Administrative Claim, or as soon thereafter as is practicable.

B. Treatment of Professional Claims.

Pursuant to section 943(b)(3), all amounts paid following the Effective Date or to be paid following the Effective Date for services or expenses in the Chapter 9 Case or incident to this Plan must be disclosed to the Bankruptcy Court and must be reasonable. There shall be paid to each holder of a Professional Claim, in full satisfaction, release, and discharge of such Claim, Cash in an amount equal to that portion of such Claim that the Bankruptcy Court approves as reasonable, on or as soon as reasonably practicable following the date on which the Bankruptcy Court enters a Final Order determining such reasonableness. The City, in the ordinary course of

1 its business, and without the requirement for Bankruptcy Court approval, may pay for
2 professional services rendered and costs incurred following the Effective Date.

3 C. Priority Claims in Chapter 9

4 The only priority claims incorporated into chapter 9 through section 901 are
5 Administrative Claims allowed under section 503(b) and entitled to priority under
6 section 507(a)(2). The treatment of all such Administrative Claims is set forth immediately above
7 in Sections II(A) and II(B). No other kinds of priority claims set forth in section 507 are
8 recognized in chapter 9 cases, and Claims that are not Administrative Claims herein and that
9 would constitute administrative expenses in a case under another chapter of the Bankruptcy Code,
10 including Other Postpetition Claims, are treated in chapter 9 and in this Plan as General
11 Unsecured Claims.

12 D. Deadline for the Filing and Assertion of Other Postpetition Claims,
13 Administrative Claims and Professional Claims.

14 All proofs of claim for Other Postpetition Claims arising on or after
15 August 16, 2013, and requests for payment or any other means of preserving and obtaining
16 payment of Administrative Claims that have not been paid, released, or otherwise settled,
17 and all requests for approval of Professional Claims, must be filed with the Bankruptcy
18 Court and served upon the City no later than 30 days after the date on which the Notice of
19 Effective Date is served. Any proof of claim for Other Postpetition Claims, or request for
20 payment of an Administrative Claim or a Professional Claim, that is not timely filed by such date
21 will be forever barred, and holders of such Claims shall be barred from asserting such Claims in
22 any manner against the City. For the avoidance of doubt, proofs of claim for Other Post-Petition
23 Claims that arose before August 16, 2013 must have been filed by August 16, 2013, in order to be
24 considered timely.

25 III. DESIGNATION OF CLASSES OF CLAIMS

26 Pursuant to sections 1122 and 1123(a)(1), all Claims other than Administrative
27 Claims and Professional Claims are classified for all purposes, including voting, confirmation,
28 and distribution pursuant to this Plan, as follows:

1 Class 1A – Claims of Ambac – 2003 Fire/Police/Library Certificates;

2 Class 1B – Claims of Holders of 2003 Fire/Police/Library Certificates;

3 Class 2 – SEB Claims of the 2006 SEB Bond Trustee/NPFG;

4 Class 3 – Arena Claims of the 2004 Arena Bond Trustee/NPFG;

5 Class 4 – Parking Structure Claims of the 2004 Parking Bond Trustee/NPFG –

6 2004 Parking Structure Bonds;

7 Class 5 – Office Building Claims of the 2007 Office Building Bond

8 Trustee/Assured Guaranty – 2007 Office Building Bonds;

9 Class 6 – Pension Obligation Bonds Claims;

10 Class 7 – Claims of DBW;

11 Class 8 – SCC 16 Claims;

12 Class 9 – Thunder Claims;

13 Class 10 – Claims of Holders of Restricted Revenue Bond and Note Payable

14 Obligations;

15 Class 11 – Claims of the Holders of Special Assessment and Special Tax

16 Obligations;

17 Class 12 – General Unsecured Claims.

18 This Class includes:

- 19 • General Unsecured Claims;
- 20 • The Golf Course/Park Unsecured Claim;
- 21 • Retiree Health Benefit Claims;
- 22 • Leave Buyout Claims;
- 23 • The Claim filed by Michael A. Cobb; and
- 24 • Other Postpetition Claims.

25 Class 13 – Convenience Class Claims;

26 Class 14 – Claims of Certain Tort Claimants;

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1 Class 15 – Claims of CalPERS Pension Plan Participants Regarding City's
2 Obligations to Fund Employee Pension Plan Contributions to CalPERS under the
3 CalPERS Pension Plan;

4 Class 16 – Claims of Equipment Lessors;

5 Class 17 – Workers Compensation Claims;

6 Class 18 – SPOA Claims;

7 Class 19 – Price Claims; and

8 Class 20 – Golf Course/Park Secured Claim.

9 **IV. TREATMENT OF CLAIMS**

10 **A. Class 1A – Claims of Ambac – 2003 Fire/Police/Library Certificates**

11 **1. Impairment and Voting.**

12 Class 1A is Impaired by this Plan since the treatment of this Class will affect the
13 legal, equitable, or contractual rights of Ambac, the holder of the Claims. Accordingly, this Class
14 is entitled to vote to accept or reject this Plan in accordance with the Plan Solicitation Order.

15 **2. Treatment.**

16 The treatment of the Class 1A Claims will be as set forth in the Ambac Settlement
17 Agreement, which should be consulted for the precise terms of the treatment. The Plan does not
18 modify, amend, or alter the amounts due to the holders of the 2003 Fire/Police/Library
19 Certificates or the obligations of Ambac to pay principal or redemption price of, or interest on,
20 the 2003 Fire/Police/Library Certificates as and when such amounts become due under the 2003
21 Fire/Police/Library Certificates Trust Agreement, which payments shall be made by Ambac in
22 accordance with, and subject to, the terms of the Ambac Insurance Policy. Ambac, as the holder
23 of the Class 1A Claims, is entitled to vote to accept or reject this Plan in accordance with the Plan
24 Solicitation Order.

25 **B. Class 1B – Claims of Holders of 2003 Fire/Police/Library Certificates**

26 **1. Impairment and Voting.**

27 Class 1B is Impaired by this Plan since the treatment of this Class will affect the
28 legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, Ambac, as

1 the deemed holder of the Claims in this Class, is entitled to vote to accept or reject this Plan in
2 accordance with the Plan Solicitation Order.

3 2. Treatment.

4 The treatment of the Class 1B claimants, the 2003 Fire/Police/Library Certificates
5 holders, is identical to the treatment of Ambac, the Class 1A claimant.

6 C. Class 2 – SEB Claims of the 2006 SEB Bond Trustee/NPFG – 2006 SEB
7 Bonds.

8 1. Impairment and Voting.

9 Class 2 is not Impaired by this Plan since the treatment of this Class will not affect
10 the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, NPFG, as
11 the deemed holder of the Claims in this Class, is not entitled to vote to accept or reject this Plan in
12 accordance with the Plan Solicitation Order.

13 2. Treatment.

14 On the Effective Date, the City will assume the SEB Lease Back and the SEB
15 Lease Out under section 365(a) pursuant to the NPFG/SEB Settlement. The finding by the
16 Bankruptcy Court that the Plan is feasible shall constitute adequate assurance of future
17 performance of the SEB Lease Back and the SEB Lease Out. The Plan does not modify, amend,
18 or alter the 2006 SEB Bonds or the obligations of NPFG to pay principal or redemption price of,
19 or interest on, the 2006 SEB Bonds as and when such amounts become due under the 2006 SEB
20 Bond Indenture, which payments shall be made by NPFG in accordance with, and subject to, the
21 terms of the 2006 SEB Bond Insurance Policy.

22 D. Class 3 – Arena Claims of the 2004 Arena Bond Trustee/NPFG – 2004 Arena
23 Bonds.

24 1. Impairment and Voting.

25 Class 3 is Impaired by this Plan since the treatment of this Class will affect the
26 legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, NPFG, as the
27 deemed holder of the Claims in this Class, is entitled to vote to accept or reject this Plan in
28 accordance with the Plan Solicitation Order

2. Treatment.

The treatment of the Class 3 Claims will be as set forth in the NPFQ Arena Settlement, which should be consulted for the precise terms of the treatment. The Plan does not modify, amend, or alter the 2004 Arena Bonds or the obligations of NPFQ to pay principal or redemption price of, or interest on, the 2004 Arena Bonds as and when such amounts become due under the 2004 Arena Bond Indenture, which payments shall be made by NPFQ in accordance with, and subject to, the terms of the 2004 Parking Bond Insurance Policy. On the Effective Date, without the need to file any further motions, the Arena Lease Out and the Arena Lease Back shall be assumed, subject to the modification of the City's obligations pursuant to the terms of the NPFQ Arena Settlement.

E. Class 4 - Parking Structure Claims of the 2004 Parking Bond Trustee/NPFQ - 2004 Parking Bonds.

1. Impairment and Voting.

Class 4 is Impaired by this Plan since the treatment of this Class will affect the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, NPFQ, as the deemed holder of the Claims in this Class, is entitled to vote to accept or reject this Plan in accordance with the Plan Solicitation Order.

2. Treatment.

The treatment of the Class 4 Claims will be as set forth in the NPFQ Parking Settlement Documents, which should be consulted for the precise terms of the treatment. On the Effective Date, without the need to file any further motions, the Parking Structure Lease Out shall be assumed, and any and all rights and obligations thereunder shall be assigned to the Parking Authority, with the obligations of the City limited by the NPFQ Parking Settlement Documents. To the extent the City determines it is necessary or desirable to do so, in addition to those executory contracts being assigned to the Parking Authority by virtue of the above, the City reserves the right to file before or after the Effective Date a motion in which it will seek authority to assign to the Parking Authority certain executory contracts and unexpired leases executed in connection with the Parking Structure Lease Out that are assumed under the Plan.

1 The Plan does not modify, amend, or alter the 2004 Parking Bonds or the
2 obligations of NPFG to pay principal or redemption price of, or interest on, the 2004 Parking
3 Bonds as and when such amounts become due under the 2004 Parking Bond Indenture, which
4 payments shall be made by NPFG in accordance with, and subject to, the terms of the 2004
5 Parking Bond Insurance Policy.

6 F. Class 5 - Office Building Claims of the 2007 Office Building Bond
7 Trustee/Assured Guaranty - 2007 Office Building Bonds.

8 1. Impairment and Voting

9 Class 5 is Impaired by this Plan since the treatment of this Class will affect the
10 legal, equitable, or contractual rights of the holder of the Claims, and, accordingly, Assured
11 Guaranty, as the holder of the Claims in this Class, is entitled to vote to accept or reject this Plan
12 in accordance with the Plan Solicitation Order.

13 2. Treatment.

14 The treatment of the Class 5 Claims will be as set forth in the Assured Guaranty
15 Settlement, which should be consulted for the precise terms of the treatment.

16 G. Class 6 - Pension Obligation Bonds Claims.

17 1. Impairment and Voting.

18 Class 6 is Impaired by this Plan since the treatment of this Class will affect the
19 legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, Assured
20 Guaranty, as the deemed holder of the Claims in this Class, is entitled to vote to accept or reject
21 this Plan in accordance with the Plan Solicitation Order. The Plan does not modify, amend or
22 alter the Pension Obligation Bonds or the obligations of Assured Guaranty to pay principal or
23 redemption price of, or interest on Pension Obligation Bonds as and when such amounts become
24 due under Pension Obligation Bonds Indenture, which payments shall be made by Assured
25 Guaranty in accordance with, and subject to, the terms of the Pension Obligation Bonds Insurance
26 Policy.

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2. Treatment.

The treatment of the Class 6 Claims will be as set forth in the Assured Guaranty Settlement, which should be consulted for the precise terms of the treatment. The Plan does not modify, amend, or alter the Pension Obligation Bonds or the obligations of Assured Guaranty to pay principal or redemption price of, or interest on Pension Obligation Bonds as and when such amounts become due under Pension Obligation Bonds Indenture, which payments shall be made by Assured Guaranty in accordance with, and subject to, the terms of the Pension Obligation Bonds Insurance Policy.

H. Class 7 - Claims of DBW

1. Impairment and Voting.

Class 7 is Impaired by this Plan since the treatment of this Class will affect the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the holder of the Claims in this Class is entitled to vote to accept or reject this Plan in accordance with the Plan Solicitation Order.

2. Treatment.

The treatment of the Class 7 Claims will be as set forth in the DBW Settlement Agreement. The General Fund will have no obligation to pay debt service on this obligation, or to reimburse operating expenses to DBW should DBW take over operations of the Marina Project. DBW will retain its pledge of rents and leases generated from the Marina Project. However, the pledge of gross revenues will be converted to a pledge of revenues net of all reasonable and direct operating expense of the Marina Project, calculated on a fiscal year basis ending June 30 of each year pursuant to section 928(b). Upon no less than 120 days notice to the City, DBW may take possession of the facilities comprising the Marina Project, and if DBW elects to continue operations of the Marina Project, DBW will be responsible for payment of all operating expenses of the Marina Project. If DBW should elect to continue operations, DBW shall provide adequate security of the premises. The General Fund shall have no liability, directly or indirectly, for the Claims of DBW, and the City may decide at any time to cease subsidizing the operating deficits of the operation of the Marina Project. DBW has stated to the City an

interest in exercising its remedy of taking possession of the Marina Project. The real property that is the subject of the Marina Project shall be that real property described in Exhibit A to this Plan, and should DBW exercise its remedy of taking possession of the Marina Project, DBW shall succeed to possession and control only over the real property set forth in Exhibit A.

I. Class 8 – SCC 16 Claims.

1. Impairment and Voting.

Class 8 is not Impaired by this Plan since the treatment of this Class will not affect the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the holders of the Claims in this Class are not entitled to vote to accept or reject this Plan in accordance with the Plan Solicitation Order.

2. Treatment.

To the extent SCC 16 has any offset rights arising under the Construction Agreement, SCC 16 shall apply any such offsets against amounts owing under the SCC 16 Promissory Note. On the Effective Date, pursuant to the Plan, without the need to file any further motions, the SCC 16 Lease shall be assumed, and any and all rights and obligations thereunder shall be assigned to the Parking Authority. On the Effective Date, any and all rights of the City under the SCC 16 Settlement, the Construction Agreement shall be assumed and assigned by the City to the Parking Authority.

J. Class 9 – Thunder Claims.

1. Impairment and Voting.

Class 9 is Impaired by this Plan since the treatment of this Class will affect the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the holders of the Claims in this Class are entitled to vote to accept or reject this Plan in accordance with the Plan Solicitation Order.

2. Treatment.

The treatment of the Class 9 Claims will be as set forth in the Thunder Settlement, which should be consulted for the precise terms of the treatment.

1 K. Class 10 - Claims of Holders of Restricted Revenue Bond and Note Payable
2 Obligations.

3 1. Impairment and Voting.

4 Class 10 is not Impaired by this Plan since the treatment of this Class will not
5 affect the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the
6 holders of the Claims in this Class are not entitled to vote to accept or reject this Plan in
7 accordance with the Plan Solicitation Order.

8 2. Treatment.

9 Class 10 consists of Claims of the holders of Restricted Revenue Bond and Note
10 Payable Obligations, which are secured by special and restricted sources of revenues.

11 Restricted Revenue Bond and Notes Payable Obligations. The City's Restricted
12 Revenue Bond and Notes Payable Obligations are secured by a pledge of and lien on revenues of
13 various of the City's systems and enterprises, which are restricted revenues pursuant to the
14 California Constitution, and are "special revenues" as defined in section 902(2). These revenues
15 are not a part of or available to the General Fund, and the General Fund is not obligated to make
16 any payment on the Restricted Revenue Bond and Note Payable Obligations. The City may
17 transfer amounts from the restricted revenues to the General Fund only to pay costs which are
18 incurred by the General Fund to provide the facility or enterprise-related services and which are
19 allocated to the enterprises on a reasonable basis in accordance with the City's accounting and
20 allocation policies and pursuant to the provisions of the relevant documents related to the
21 Restricted Revenue Bonds and Notes Payable Obligations. Such transfers are treated by the
22 facility or enterprise as operation and maintenance expenses. The City will continue to apply
23 restricted revenues to pay the Restricted Revenue Bond and Notes Payable Obligations as
24 required by the terms of such obligations.

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1. Class 11 – Claims of Holders of Special Assessment and Special Tax Obligations

1. Impairment and Voting.

Class 11 is not Impaired by this Plan since the treatment of this Class will not affect the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the holders of the Claims in this Class are not entitled to vote to accept or reject this Plan in accordance with the Plan Solicitation Order.

2. Treatment.

Class 11 consists of Claims of the holders of Special Assessment and Special Tax Obligations, which are secured by special and restricted sources of revenues consisting of specific levies on real property within certain financing districts created by the City.

Special Assessment and Special Tax Obligations. The Special Assessment and Special Tax Obligations are secured by certain special assessments and special taxes levied on specific real property within the respective districts for which these obligations were issued. These special assessment and special tax revenues are legally restricted to the payment of debt service on the Special Assessment and Special Tax Obligations under California statutes and the California Constitution, are "special revenues" as defined in section 902(2), and cannot be used for any other purpose or be transferred to the General Fund. The General Fund is not obligated to pay debt service on the Special Assessment and Special Tax Obligations. The City will continue to apply revenues from the applicable special assessments and special taxes to pay the Special Assessment and Special Tax Obligations as required by the terms of such obligations.

M. Class 12 – General Unsecured Claims

1. Impairment and Voting.

Class 12 is Impaired by this Plan since the treatment of this Class will affect the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the holders of the Claims in this Class are entitled to vote to accept or reject this Plan in accordance with the Plan Solicitation Order.

2. Treatment.

The Claims in this Class include without limitation: (i) the Retiree Health Benefit Claims; (ii) the Golf Course/Park Unsecured Claim; (iii) the Leave Buyout Claims; (iv) the Claim filed by Michael A. Cobb; and (v) Other Postpetition Claims.

Pursuant to the Retirees Settlement, on the Effective Date, the City will pay the Retiree Health Benefit Claimants an aggregate amount of \$5,100,000 in full satisfaction of the Allowed Retiree Health Benefit Claims, and no other retiree health benefits will be provided by the City. If required by state or federal law, the City will withhold from the aggregate \$5,100,000 payment any taxes or other deductions to be withheld from the individual payment to each Retiree Health Benefit Claimant. The individual recipient is responsible for any tax liability for this payment, and the City will not provide any advice to any recipient as to the taxable impact of this payment.

All other General Unsecured Claims shall receive cash on the Effective Date in the amount equal to a percentage of the Allowed amount of such Claims, which percentage equals the Unsecured Claim Payout Percentage, or such other amount as is determined by the Bankruptcy Court before confirmation of this Plan to constitute a pro-rata payment on such other General Unsecured Claims; *provided, however*, that the dollar amount to be paid on account of General Unsecured Claims other than the Retiree Health Benefit Claims on the Effective Date shall not exceed \$500,000. If the amounts to be paid exceed \$500,000, then such excess amounts shall be made in two equal annual installments on the first and second anniversary of the Effective Date, together with simple interest accruing from and after the Effective Date at 5% per annum. Such excess amounts may be prepaid at the option of the City without penalty.

N. Class 13 - Convenience Class Claims:

1. Impairment and Voting.

Class 13 is not Impaired by this Plan since the treatment of this Class will not affect the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the holders of the Claims in this Class are not entitled to vote to accept or reject this Plan in accordance with the Plan Solicitation Order.

2. Treatment.

Holders of Convenience Class Claims will receive cash on the Effective Date in the amount of their Allowed Convenience Class Claim, but not to exceed \$100.

O. Class 14 - Claims of Certain Tort Claimants.

1. Impairment and Voting.

Class 14 is Impaired by this Plan since the treatment of this Class will affect the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the holders of the Claims in this Class are entitled to vote to accept or reject this Plan in accordance with the Plan Solicitation Order.

2. Treatment.

The SIR Claim Portion of each Allowed General Liability Claim will be paid on the Effective Date from the Risk Management Internal Service Fund, and will receive the same percentage payment on the dollar of Allowed Claim as will the holders of Allowed Class 12 Claims. The Insured Portion of each Allowed General Liability Claim is not Impaired, and shall be paid by the applicable excess risk-sharing pool.

P. Class 15 - Claims of CalPERS Pension Plan Participants Regarding City's Obligations to Fund Employee Pension Plan Contributions to CalPERS under the CalPERS Pension Plan.

1. Impairment and Voting.

Class 15 is not Impaired by this Plan because the treatment of this Class will not affect the legal, equitable, or contractual rights of the holder of such Claims, and, accordingly, the holder of the Claims in this Class is not entitled to vote to accept or reject this Plan.

2. Treatment.

The City will continue to honor its obligations under the CalPERS Pension Plan, and CalPERS and the CalPERS Pension Plan Participants retain all of their rights and remedies under applicable nonbankruptcy law. Thus, CalPERS and the CalPERS Pension Plan Participants will be entitled to the same rights and benefits to which they are currently entitled under the CalPERS Pension Plan. CalPERS, pursuant to the CalPERS Pension Plan, will

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continue to provide pension benefits for participants in the manner indicated under the provisions of the CalPERS Pension Plan and applicable nonbankruptcy law.

Q. Class 16 - Claims of Equipment Lessors.

1. Impairment and Voting.

Class 16 is not Impaired by this Plan because the treatment of this Class will not affect the legal, equitable, or contractual rights of the holder of such Claims, and, accordingly, the holders of the Claims in this Class is not entitled to vote to accept or reject this Plan.

2. Treatment.

Any equipment leases not specifically rejected by the Rejection Motion will be assumed under this Plan. The City believes that it is current on all such equipment leases and therefore no cure payments are required.

R. Class 17 - Workers Compensation Claims.

1. Impairment and Voting.

Class 17 is not Impaired by this Plan since the treatment of this Class will not affect the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the holders of the Claims in this Class are not entitled to vote to accept or reject this Plan in accordance with the Plan Solicitation Order.

2. Treatment.

The City must pay Allowed SIR Claim Portions related to Workers Compensation Claims in full. If not, the City will lose its State workers compensation insurance for those claims in excess of the SIR Claim Portions, exposing the City's current and former workers to grave risk. The City will pay the SIR Claim Portions related to Worker Compensation Claims from the Workers Compensation Internal Service Fund.

S. Class 18 - SPOA Claims.

1. Impairment and Voting.

Class 18 is Impaired by this Plan since the treatment of this Class will affect the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the holders of

the Claims in this Class are entitled to vote to accept or reject this Plan in accordance with the Plan Solicitation Order.

2. Treatment.

The City will honor the SPOA Claims held by SPOA members on the terms and conditions set forth in the SPOA MOU.

T. Class 19 – Price Claims.

1. Impairment and Voting.

Class 19 is Impaired by this Plan since the treatment of this Class will affect the legal, equitable, or contractual rights of the holders of the Claims, and, accordingly, the holders of the Claims in this Class are entitled to vote to accept or reject this Plan in accordance with the Plan Solicitation Order.

2. Treatment.

The treatment of the Class 19 Claims will be as set forth in the Price Settlement, which should be consulted for the precise terms of the treatment.

U. Class 20 – Golf Course/Park Secured Claim.

1. Impairment and Voting.

The treatment of the Golf Course/Park Secured Claim set forth below is the result of the entry by the Bankruptcy Court of the Partial Judgment. Class 20 is Impaired by this Plan since the treatment of this Class will affect the legal, equitable, or contractual rights of the holder of the Claim, and, accordingly, the holder of the Claim in this Class is entitled to vote to accept or reject this Plan in accordance with the Plan Solicitation Order.

2. Treatment.

a. The City will pay to the 2009 Golf Course/Park Bond Trustee the full amount of the Allowed Golf Course/Park Secured Claim (i.e., \$4,052,000) in cash on the Effective Date, in full and complete satisfaction of the Allowed Golf Course/Park Secured Claim.

b. Such payment will be in complete satisfaction of the Allowed Golf Course/Park Secured Claim, and all liens and security interests in any properties of the City and

1 the Financing Authority that secure it will be fully satisfied and released by the holder of the
2 Allowed Golf Course/Park Secured Claim upon payment.

3 c. For the avoidance of doubt, and in furtherance of the Partial
4 Judgment, the Golf Course/Park Lease Out and the Golf Course/Park Lease Back are terminated
5 as of the Effective Date.

6 V. ACCEPTANCE OR REJECTION; CRAMDOWN

7 A. Voting of Claims.

8 Each holder of an Allowed Claim (and, as applicable as specified herein, Ambac,
9 NPPG, and Assured Guaranty) classified into Classes 1A, 1B, 3, 4, 5, 6, 7, 9, 12, 14, 18, 19, and
10 20 shall be entitled to vote each such Claim to accept or reject this Plan. The holder of the
11 Class 20 Claim is deemed not to have accepted the Plan.

12 With respect to any Class of Impaired Claims that fails to accept this Plan, the
13 City, as proponent of this Plan, will request that the Bankruptcy Court nonetheless confirm this
14 Plan pursuant to the so-called "cramdown" powers set forth in section 1129(b).

15 VI. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

16 A. Assumption of Executory Contracts and Unexpired Leases.

17 Without the need to file any further motions, in addition to the assumption of
18 equipment leases in Class 16, the City elects to assume and will assume as of the Effective Date
19 all executory contracts and unexpired leases to which it is a party (and will assign certain of those
20 executory contracts as set forth in the Plan) except: (i) for those unexpired leases and executory
21 contracts specified in subsection C. below; and (ii) as otherwise provided in this Plan. Further, as
22 set forth in Section IV.E.2 dealing with the treatment of the Class 4 Claims, and in addition to the
23 assignment described and effected therein, to the extent the City determines it is necessary or
24 desirable to do so, the City reserves the right to file before or after the Effective Date a motion in
25 which it will seek authority to assign to the Parking Authority certain executory contracts and
26 unexpired leases executed in connection with the Parking Structure Lease Out that are assumed
27 under the Plan.

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1 B. Cure Payments.

2 The Bankruptcy Court shall resolve all disputes regarding: (i) the amount of any
3 cure payment to be made in connection with the assumption of any contract or lease; (ii) the
4 ability of the City to provide "adequate assurance of future performance" within the meaning of
5 section 365 under the contract or lease to be assumed; and (iii) any other matter pertaining to such
6 assumption and assignment. Any party to an executory contract or unexpired lease that is to be
7 assumed by the City that asserts that any payment or other performance is due as a condition to
8 the proposed assumption shall file with the Bankruptcy Court and serve upon the City a written
9 statement and accompanying declaration in support thereof, specifying the basis for its Claim
10 within 90 days of the Effective Date. The failure to timely file and serve such a statement in
11 accordance shall be deemed to be a waiver of any and all objections to the proposed assumption
12 and any claim for cure amounts of the agreement at issue.

13 C. Rejection of Executory Contracts and Unexpired Leases.

14 The Golf Course/Park Lease Out and the Golf Course/Park Lease Back (to the
15 extent that such leases, which were recharacterized by the Partial Judgment, remain in effect
16 notwithstanding the treatment in Section IV.U.2.c) and the Office Building Standby Agreement
17 are rejected under this Plan, without the need to file any motions.

18 In addition, no later than 120 days after the Effective Date, the City will file a
19 Rejection Motion, in which it will seek authority to reject certain executory contracts and
20 unexpired leases, which may include those listed below. The City is currently unaware of any
21 other executory contracts and unexpired leases that may be included in the Rejection Motion, but
22 reserves the right to add others.

- 23 ■ Lease, dated as of December 27, 1974, between the City, as lessor, and
24 Stephens Marine, Inc., a California corporation, as lessee, as amended;
- 25 • Lease, dated as of June 21, 1988, between the City, as lessor, and Stockton
26 Sailing Club, a California corporation, as lessee, as amended by the First
27 Amendment to Lease, dated as of August 22, 1994;

- Agreement for Purchase and Sale of Real Property, dated as of August 17, 2004, by and between the City and the County of San Joaquin; and
- Ports License Agreement (only if the City and the Ports have been unable to reach an agreement on the Ports Settlement Documents prior to 120 days after the filing of the Notice of the Effective Date).

D. Claims Arising From Rejection.

Proofs of claim arising from the rejection of executory contracts or unexpired leases must be filed with the Bankruptcy Court and served on the City no later than 28 days after the date on which notice of entry of the order approving the Rejection Motion is served on the parties to the executory contracts and expired leases subject to the Rejection Motion. Any Claim for which a proof of claim is not filed and served within such time will be forever barred and shall not be enforceable against the City or its assets, properties, or interests in property. Unless otherwise ordered by the Bankruptcy Court, all such Claims that are timely filed as provided herein shall be classified into Class 12 (General Unsecured Claims) and treated accordingly.

VII. IMPLEMENTATION AND MEANS FOR IMPLEMENTATION OF THIS PLAN

Following the Effective Date, the City will continue to operate pursuant to the City Charter, the California Constitution, and other applicable laws.

Pursuant to the Rejection Motion, the City will reject certain (i) unexpired leases and (ii) executory contracts, including, without limitation, the Ports License Agreement, if the City and the Ports have been unable to reach an agreement on the Ports Settlement Documents prior to 120 days after the Effective Date.

On the Effective Date, pursuant to the Plan, without the need to file any further motions, the City will assume, among other leases, (i) the SEB Lease Out and the SEB Lease Back; and (ii) the Arena Lease Out and the Arena Lease Back, as modified by the NPFG Arena Settlement. Further, pursuant to the NPFG Parking Settlement, the City will assign the Parking Structure Lease Out and the Parking Structure Lease Back to the Parking Authority of the City of Stockton, and the Parking Authority of the City of Stockton will assume all of the City's obligations under the Parking Structure Lease Out and the Parking Structure Lease Back. On the

1 Effective Date, pursuant to the Plan, without the need to file any further motions, the SCC 16
2 Lease shall be assumed, and any and all rights and obligations thereunder shall be assigned to the
3 Parking Authority. On the Effective Date any and all rights of the City under the SCC 16
4 Settlement, the Construction Agreement shall be assumed and assigned by the City to the Parking
5 Authority.

6 **VIII. RESERVATION OF THE CITY'S RIGHTS OF ACTION**

7 All of the City's claims, causes of action, rights of recovery, rights of offset,
8 recoupment rights to refunds, and similar rights shall be retained by the City. The failure to list in
9 the Disclosure Statement any potential or existing Right of Action retained by the City is not
10 intended to and shall not limit the rights of the City to pursue any such action. Unless a Right of
11 Action is expressly waived, relinquished, released, compromised, or settled (in this Plan or
12 otherwise), the City expressly reserves all Rights of Action for later adjudication and, as a result,
13 no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue
14 preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to
15 such Rights of Action upon or after the confirmation or consummation of this Plan or the
16 Effective Date. In addition, the City expressly reserves the right to pursue or adopt against any
17 other Entity any claims alleged in any lawsuit in which the City is a defendant or an interested
18 party.

19 **IX. DISTRIBUTIONS**

20 **A. Distribution Agent.**

21 On or after the Effective Date, the City may retain one or more agents (including
22 Rust Omni) to perform or assist it in performing the distributions to be made pursuant to this
23 Plan, which agents may serve without bond. The City may provide reasonable compensation to
24 any such agent(s) without further notice or Bankruptcy Court approval.

25 **B. Delivery of Distributions.**

26 All distributions to any holder of an Allowed Claim shall be made at the address of
27 such holder as set forth in the books and records of the City or its agents, unless the City has been
28 notified by such holder in a writing that contains an address for such holder different from the

address reflected in the City's books and records. All such notifications of address changes and all address confirmations should be mailed to: Rust Consulting/Ormi Bankruptcy, 5955 DeSoto Avenue, Suite 100, Woodland Hills, CA 91367. All distributions to the Indenture Trustee shall be made in accordance with the relevant indenture, as applicable.

C. Distributions of Unclaimed Property.

If any distribution to any holder of a Claim is returned to the City or its agent as undeliverable, no further distributions shall be made to such holder unless and until the City is notified in writing of such holder's then-current address. Any unclaimed distributions shall be set aside and held in a segregated account to be maintained by the City pursuant to the terms of this Plan. No later than 63 days after the date of the first distributions under the Plan, the City shall file with the Bankruptcy Court a list of unclaimed distributions, together with a schedule that identifies the name and last-known addresses of the holders of any unclaimed distributions. The City shall not be required to make any further attempt to locate the holders of any unclaimed distributions. Any distribution under the Plan that remains unclaimed after 91 days following the date of the first distributions under the Plan (including, without limitation, because the distribution made to the last known address is returned as undeliverable), shall be deemed not to have been made and, together with any accrued interest or dividends earned thereon, shall be transferred to and vest in the City for any use as the City sees fit. The City shall not be obligated to make any further distributions on account of the Claim with respect to which such distribution was made, and such Claim shall be treated as a Disallowed Claim. Nothing contained herein shall affect the discharge of the Claim with respect to which such distribution was made, and the holder of such Claim shall be forever barred from enforcing such Claim against the City or its assets, estate, properties, or interests in property.

D. Distributions of Cash.

Any payment of Cash to be made by the City or its agent pursuant to this Plan shall be made by check drawn on a domestic bank or by wire transfer, at the sole option of the City.

1 E. Timeliness of Payments.

2 Any payments or distributions to be made pursuant to this Plan shall be deemed to
3 be timely made if made within 14 days after the dates specified in this Plan. Whenever any
4 distribution to be made under this Plan shall be due on a day that is not a Business Day, such
5 distribution instead shall be made, without interest on such distribution, on the immediately
6 succeeding Business Day, but shall be deemed to have been timely made on the date due.

7 F. Compliance with Tax, Withholding, and Reporting Requirements.

8 The City shall comply with all tax, withholding, reporting, and like requirements
9 imposed on it by any government unit, including without limitation, any payments related to
10 CalPERS's required pension obligations, and all distributions pursuant to this Plan shall be
11 subject to such withholding and reporting requirements. In connection with each distribution
12 with respect to which the filing of an information return (such as Internal Revenue Service Forms
13 W-2, 1099, or 1042) or withholding is required, the City shall file such information return with
14 the Internal Revenue Service and provide any required statements in connection therewith to the
15 recipients of such distribution, or effect any such withholding and deposit all moneys so withheld
16 to the extent required by law. With respect to any entity from whom a tax identification number,
17 certified tax identification number, or other tax information which is required by law to avoid
18 withholding has not been received by the City, the City at its sole option may withhold the
19 amount required and distribute the balance to such entity or decline to make such distribution
20 until the information is received.

21 G. Time Bar to Cash Payments.

22 Checks issued by the City on account of Allowed Claims shall be null and void if
23 not negotiated within 91 days from and after the date of issuance thereof. Requests for reissuance
24 of any check shall be made directly to the City by the holder of the Allowed Claim with respect to
25 which such check originally was issued. Any claim in respect of such a voided check must be
26 made on or before the second anniversary of the Effective Date. After such date, all Claims in
27 respect of voided checks will be discharged and forever barred and the City will retain all moneys
28 related thereto.

1 H. No De Minimis Distributions.

2 Notwithstanding any other provision of this Plan, no Cash payment of less than
3 \$10 will be made by the City on account of any Allowed Claim.

4 I. No Distributions on Account of Disputed Claims.

5 Notwithstanding anything to the contrary in this Plan, no distributions shall be
6 made on account of any part of any Disputed Claim until such Claim becomes Allowed (and then
7 only to the extent so Allowed). Distributions made after the Effective Date in respect of Claims
8 that were not Allowed as of the Effective Date (but which later became Allowed) shall be deemed
9 to have been made as of the Effective Date.

10 J. No Postpetition Accrual.

11 Unless otherwise specifically provided in this Plan or Allowed by order of the
12 Bankruptcy Court, the City will not be required to pay to any holder of a Claim any interest,
13 penalty, or late charge accruing with respect to such claim on or after the Petition Date. This
14 provision does not apply to holders of the 2003 Fire/Police/Library Certificates, the 2004 Arena
15 Bonds, the 2004 Parking Bonds, the 2006 SEB Bonds, the 2007 Office Building Bonds, and the
16 2009 Golf Course/Park Bonds, which bonds are not themselves obligations of the City and
17 therefore are not Claims. Therefore, the holders of such bonds and certificates will retain all of
18 their rights to postpetition interest, penalties, and late charges. This provision also does not apply
19 to Assured Guaranty, as the deemed holder of the Pension Obligation Bonds Claims, which shall
20 receive interest on any payments required of the City by the Assured Guaranty Settlement
21 Documents on account of such Pension Obligation Bonds Claims, which payments are delayed by
22 a failure to satisfy or waive the conditions to the Effective Date. Any such delayed payments
23 shall accrue interest at the rate specified in the Assured Guaranty Settlement Documents.

24 K. CalPERS Pension Plan.

25 Except as set forth in Section IX(F), this Section IX shall not apply to the
26 CalPERS Pension Plan.

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X. DISPUTED CLAIMS; OBJECTIONS TO CLAIMS; PROSECUTION OF
OBJECTIONS TO DISPUTED CLAIMS

A. Claims Objection Deadline; Prosecution of Objections.

The City will have the right to object to the allowance of Claims filed with the Bankruptcy Court with respect to which liability or allowance is disputed in whole or in part. Unless otherwise ordered by the Bankruptcy Court, the City must file and serve any such objections to Claims by not later than 182 days after the Effective Date (or, in the case of Claims lawfully filed after the Effective Date, by not later than 182 days after the date of filing of such Claims).

B. Payments and Distributions with Respect to Disputed Claims.

After the Effective Date has occurred, at such time as a Disputed Claim becomes an Allowed Claim, in whole or in part, the City or its agent will distribute to the holder thereof the distributions, if any, to which such holder is then entitled under this Plan. Such distributions, if any, will be made as soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing such Disputed Claim becomes a Final Order (or such other date as the Claim becomes an Allowed Claim), but in no event more than 63 days thereafter. Unless otherwise specifically provided in this Plan or Allowed by order of the Bankruptcy Court, no interest will be paid on Disputed Claims that later become Allowed Claims.

XI. EFFECT OF CONFIRMATION

A. Discharge of the City.

Pursuant to section 944, upon the Effective Date, the City will be discharged from all Debts of the City and Claims against the City other than (i) any Debt specifically and expressly excepted from discharge by this Plan or the Confirmation Order, or (ii) any Debt owed to an entity that, before the Confirmation Date, had neither notice nor actual knowledge of the Chapter 9 Case. The rights afforded in the Plan and the treatment of all holders of Claims, whether such Claims are Impaired or Unimpaired under the Plan, will be in exchange for and in complete satisfaction, discharge, and release of all Claims of any nature whatsoever arising on or before the Effective Date, known or unknown, including any interest accrued or expenses

1 incurred thereon from and after the Petition Date, whether against the City or any of its
2 properties, assets, or interests in property. Except as otherwise provided herein, upon the
3 Effective Date, all Pre-Confirmation Date Claims will be and shall be deemed to be satisfied,
4 discharged, and released in full, be they Impaired or Unimpaired under this Plan. For the
5 avoidance of doubt, as provided in Class 15 herein, nothing in the Plan discharges, releases, or
6 impairs obligations of the City under the CalPERS Pension Plan, and CalPERS and the CalPERS
7 Pension Plan Participants retain all of their rights and remedies under applicable nonbankruptcy
8 law with respect to the CalPERS Pension Plan.

9 Notwithstanding any other provision of this Plan or the Confirmation Order, the
10 City's obligations pursuant to the Contracts For Loan Guarantee shall remain extant and
11 enforceable and not subject to discharge pursuant to section 944; *provided, however*, that the City
12 retains all defenses to the enforceability of any such obligations under applicable nonbankruptcy
13 law.

14 B. Injunction.

15 Except as otherwise expressly provided in this Plan, all entities who have held,
16 held, or may hold Pre-Confirmation Date Claims shall be permanently enjoined from and after
17 the Confirmation Date from: (i) commencing or continuing in any manner any action or other
18 proceeding of any kind with respect to any such Pre-Confirmation Date Claim against the City or
19 its property; (ii) enforcing, attaching, collecting, or recovering by any manner or means any
20 judgment, award, decree, or order against the City or its property with respect to such Pre-
21 Confirmation Date Claims; (iii) creating, perfecting, or enforcing any lien or encumbrance of any
22 kind against the City or its property; and (iv) asserting any right of setoff, subrogation, or
23 recoupment of any kind against any obligation due to the City with respect to any such Pre-
24 Confirmation Date Claim, except as otherwise permitted by section 553. For the avoidance of
25 doubt, nothing in the Plan enjoins CalPERS or any CalPERS Pension Plan Participant with
26 respect to the CalPERS Pension Plan.

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1 C. Term of Existing Injunctions or Stays.

2 Unless otherwise provided, all injunctions or stays provided for in the Chapter 9
3 Case pursuant to sections 105, 362, or 922, or otherwise, and in existence on the Confirmation
4 Date, will remain in full force and effect until the Effective Date.

5 D. Exculpation.

6 Except with respect to obligations specifically arising pursuant to or preserved in
7 this Plan, including but not limited to the Insurance Policies, no Exculpated Party shall have or
8 incur, and each Exculpated Party is hereby released and exculpated from, any claim, obligation,
9 cause of action or liability for any claim in connection with or arising prior to or on the Effective
10 Date for any act taken or omitted to be taken in connection with, or related to, (i) the
11 administration of the Chapter 9 Case, (ii) the negotiation, pursuit, confirmation, solicitation of
12 votes for, consummation or implementation of the Plan, (iii) the administration of the Plan or
13 property to be distributed under the Plan, (iv) the AB 506 process, (v) any document, release,
14 contract, or other instrument entered into in connection with, or relating to, the Plan or the
15 settlements referenced within the Plan or (vi) any other transaction contemplated by, or entered
16 into, in connection with the Plan; *provided, however*, that nothing in this Section XI(D) shall be
17 deemed to release or exculpate any Exculpated Party for its willful misconduct or gross
18 negligence. In all respects, each Exculpated Party shall be entitled to reasonably rely upon the
19 advice of counsel with respect to its duties and responsibilities pursuant to the Plan.

20 E. Releases Among Releasing Parties and Released Parties.

21 EFFECTIVE AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE
22 CONSIDERATION PROVIDED BY EACH OF THE RELEASED PARTIES, THE
23 ADEQUACY OF WHICH IS HEREBY CONFIRMED, TO THE FULLEST EXTENT
24 PERMISSIBLE UNDER APPLICABLE LAW, (i) THE CITY AND EACH OF ITS RELATED
25 PERSONS (COLLECTIVELY, THE "CITY-RELEASING PARTIES") SHALL, AND SHALL
26 BE DEEMED TO, COMPLETELY, CONCLUSIVELY, ABSOLUTELY,
27 UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASE, WAIVE, VOID,
28 EXTINGUISH, AND DISCHARGE EACH AND ALL OF THE RELEASED PARTIES (AND

1 EACH SUCH RELEASED PARTY SO RELEASED SHALL BE DEEMED FOREVER
2 RELEASED, WAIVED AND DISCHARGED BY THE CITY (RELEASING PARTIES) AND
3 THEIR RESPECTIVE PROPERTIES AND RELATED PERSONS; AND (ii) EACH OF NPFG,
4 ASSURED GUARANTY, AMBAC, THE INDENTURE TRUSTEE IN ALL ITS CAPACITIES
5 (EXCEPT IN ITS CAPACITY AS THE 2009 GOLF COURSE/PARK BOND TRUSTEE)
6 (COLLECTIVELY WITH THE CITY RELEASING PARTIES, THE "RELEASING
7 PARTIES") SHALL, AND SHALL BE DEEMED TO, COMPLETELY, CONCLUSIVELY,
8 ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASE,
9 WAIVE, VOID, EXTINGUISH, AND DISCHARGE THE CITY (AND THE CITY SHALL BE
10 DEEMED FOREVER RELEASED, WAIVED AND DISCHARGED BY SUCH RELEASING
11 PARTIES), OF AND FROM ANY AND ALL OF THE FOLLOWING: CLAIMS, CAUSES OF
12 ACTION, LITIGATION CLAIMS, AVOIDANCE ACTIONS AND ANY OTHER DEBTS,
13 OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, REMEDIES, JUDGMENTS, AND
14 LIABILITIES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, THE AB 506
15 PROCESS AND THE ELIGIBILITY CONTEST), WHETHER KNOWN OR UNKNOWN,
16 FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, FIXED OR
17 CONTINGENT, MATURED OR UNMATURED, EXISTING AS OF THE EFFECTIVE DATE
18 OR THEREAFTER ARISING, IN LAW, AT EQUITY, WHETHER FOR TORT, CONTRACT,
19 OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION,
20 TRANSACTION, EVENT OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING
21 OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR
22 RELATED IN ANY WAY IN WHOLE OR IN PART TO THE CITY OR ITS ASSETS AND
23 PROPERTY, THE CHAPTER 9 CASE, THE DISCLOSURE STATEMENT, THIS PLAN OR
24 THE SOLICITATION OF VOTES ON THIS PLAN THAT SUCH RELEASING PARTY
25 WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT (WHETHER INDIVIDUALLY
26 OR COLLECTIVELY) OR THAT ANY HOLDER OF A CLAIM OR EQUITY INTEREST OR
27 OTHER ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT FOR OR ON
28 BEHALF OF SUCH RELEASING PARTY (WHETHER DIRECTLY OR DERIVATIVELY)

1 AGAINST ANY OF THE RELEASED PARTIES OR THE CITY, AS APPLICABLE;
2 PROVIDED, HOWEVER, THAT THE FOREGOING PROVISIONS OF THIS RELEASE
3 SHALL NOT OPERATE TO WAIVE OR RELEASE (i) ANY CAUSES OF ACTION, CLAIMS
4 OR AGREEMENTS EXPRESSLY SET FORTH IN AND/OR PRESERVED BY THIS PLAN
5 OR ANY PLAN SUPPLEMENT, INCLUDING BUT NOT LIMITED TO THE INSURANCE
6 POLICIES; AND/OR (ii) THE RIGHTS OF SUCH RELEASING PARTY TO ENFORCE THIS
7 PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES, AND OTHER
8 AGREEMENTS OR DOCUMENTS DELIVERED UNDER OR IN CONNECTION WITH
9 THIS PLAN OR ASSUMED PURSUANT TO THIS PLAN OR ASSUMED PURSUANT TO
10 FINAL ORDER OF THE BANKRUPTCY COURT. THE FOREGOING RELEASE SHALL
11 BE EFFECTIVE AS OF THE EFFECTIVE DATE WITHOUT FURTHER NOTICE TO OR
12 ORDER OF THE BANKRUPTCY COURT, ACT OR ACTION UNDER APPLICABLE LAW,
13 REGULATION, ORDER, OR RULE OR THE VOTE, CONSENT, AUTHORIZATION OR
14 APPROVAL OF ANY PERSON.

15 F. Good Faith Compromise.

16 Pursuant to Bankruptcy Rule 9019, to the extent applicable, and in consideration
17 for the distributions and other benefits provided under this Plan, the provisions of this Plan,
18 including the exculpation and release provisions contained in this Article XI, constitute a good
19 faith compromise and settlement of all Claims, causes of action or controversies relating to the
20 rights that a holder of a Claim may have with respect to any Claim against the City, any
21 distribution to be made pursuant to the Plan on account of any such Claim and any and all Claims
22 or causes of action of any party arising out of or relating to the AB 506 Process or the Eligibility
23 Contest. The entry of the Confirmation Order constitutes the Bankruptcy Court's approval, as of
24 the Effective Date, of the compromise or settlement of all such Claims or controversies and the
25 Bankruptcy Court's finding that all such compromises or settlements are in the best interests of
26 the City and the holders of Claims, and are fair, equitable, and reasonable.

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1 **XII. RETENTION OF AND CONSENT TO JURISDICTION**

2 Following the Effective Date, the Bankruptcy Court shall retain and have
3 exclusive jurisdiction over any matter (i) arising under the Bankruptcy Code and relating to the
4 City, (ii) arising in or related to the Chapter 9 Case or this Plan, and (iii) otherwise for the
5 following:

6 1. to resolve any matters related to the assumption, assumption and assignment, or
7 rejection of any executory contract or unexpired lease to which the City is a party or with respect
8 to which the City may be liable, and to hear, determine and, if necessary, liquidate any Claims
9 arising therefrom;

10 2. to enter such orders as may be necessary or appropriate to implement or
11 consummate the provisions of this Plan, and all other contracts, settlement agreements,
12 instruments, releases, exculpations, and other agreements or documents related to this Plan;

13 3. to determine any and all motions, adversary proceedings, applications, and
14 contested or litigated matters that may be pending on the Effective Date or that, pursuant to this
15 Plan, may be instituted by the City after the Effective Date or that are instituted by any holder of a
16 Claim before or after the Effective Date concerning any matter based upon, arising out of, or
17 relating to the Chapter 9 Case, whether or not such action initially is filed in the Bankruptcy
18 Court or any other court;

19 4. to ensure that distributions to holders of Allowed Claims are accomplished as
20 provided herein;

21 5. to hear and determine any objections to Claims or to proofs of Claim filed, both
22 before and after the Effective Date, including any objections to the classification of any Claim,
23 and to allow, disallow, determine, liquidate, classify, estimate, or establish the priority of or
24 secured or unsecured status of any Claim, in whole or in part;

25 6. to enter and implement such orders as may be appropriate in the event the
26 Confirmation Order is for any reason stayed, revoked, modified, reversed, or vacated;

27 7. to issue such orders in aid of execution of this Plan, to the extent authorized by
28 section 1142(b):

1 8. to consider any modifications of this Plan, to cure any defect or omission, or to
2 reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation
3 Order;

4 9. to the extent that the City elects to bring such matters before the Bankruptcy Court,
5 to hear and determine all applications for awards of compensation for services rendered and
6 reimbursement of expenses incurred prior to the Effective Date;

7 10. to hear and determine all disputes or controversies arising in connection with or
8 relating to this Plan or the Confirmation Order or the interpretation, implementation, or
9 enforcement of this Plan or the Confirmation Order or the extent of any Entity's obligations
10 incurred in connection with, released, enjoined, or exculpated under this Plan or the Confirmation
11 Order;

12 11. to issue injunctions, enter and implement other orders, or take such other actions as
13 may be necessary or appropriate to restrain interference by any entity with consummation or
14 enforcement of this Plan;

15 12. to determine any other matters that may arise in connection with or are related to
16 this Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release
17 or other agreement or document related to this Plan or the Disclosure Statement;

18 13. to hear any other matter for any purpose specified in the Confirmation Order that
19 is not inconsistent with the Bankruptcy Code;

20 14. to hear and determine all disputes or controversies arising in connection with or
21 relating to the terms or enforcement of any relevant agreements; and

22 15. to enter a final decree closing the Chapter 9 Case.

23 This Section XII shall not apply to any Claims, disputes, controversies, or other
24 matters arising under or in connection with the CalPERS Pension Plan.

25 XIII. CONDITIONS PRECEDENT

26 A. Conditions Precedent to Confirmation.

27 The conditions precedent to confirmation of the Plan are: (i) the entry of the
28 Confirmation Order in form and substance satisfactory to the City, and which is reasonably

1 satisfactory to Assured Guaranty, Ambac, NPFG, and the Indenture Trustee; and (ii) the approval
2 of the State of California Department of Finance of the restructuring of the Arena Pledge
3 Agreement as described in the NPFG Settlement.

4 B. Conditions Precedent to Effective Date.

5 The "effective date of the plan," as used in section 1129, shall not occur, and this
6 Plan shall be of no force and effect, until the Effective Date. The occurrence of the Effective
7 Date is subject to the satisfaction (or waiver as set forth in Section XIII(C)) of the following
8 conditions precedent:

9 1. Confirmation Order. The Confirmation Order shall have been
10 entered, shall be in full force and effect, and shall be a Final Order (but the
11 requirement that the Confirmation Order be a Final Order may be waived by the City
12 at any time).

13 2. Plan Documents. All agreements and instruments
14 contemplated by, or to be entered into pursuant to, this Plan shall be in form and
15 substance acceptable to the City (and in the case of all agreements and instruments
16 between the City and Ambac, Assured Guaranty, NPFG, and the Indenture Trustee,
17 acceptable to Ambac, Assured Guaranty, NPFG, and the Indenture Trustee,
18 respectively); shall have been duly and validly executed and delivered (including, but
19 not limited to, any documents necessary to be executed on or prior to the Effective
20 Date so as to implement the Ambac Settlement, the Assured Guaranty Settlement, and
21 the NPFG Settlement, respectively, and the satisfaction or waiver of the conditions
22 precedent to the Ambac Settlement, the Assured Guaranty Settlement, and the NPFG
23 Settlement, respectively), or deemed executed by the parties thereto; and all conditions
24 to their effectiveness shall have been satisfied or waived.

25 3. Authorizations, Consents, Etc. The City shall have received
26 any and all authorizations, consents, regulatory approvals, rulings, no-action letters,
27 opinions, and documents that are necessary to implement the Plan and that are
28 required by law, regulation or order.

1 4. Timing. The Effective Date shall occur on the first Business
2 Day on which the conditions set forth in Section XIII(B)(1) and (B)(2) are satisfied or
3 waived; *provided* that, unless otherwise ordered by the Bankruptcy Court, the
4 Effective Date must occur by no later than 182 days after the Confirmation Date.

5 C. Waiver of Conditions to Effective Date.

6 The City may waive in whole or in part any condition to effectiveness of this Plan.
7 If a condition to the occurrence of the Effective Date is the occurrence of the conditions to the
8 effectiveness of the Ambac Settlement Agreement, the Assured Guaranty Settlement, or the
9 NPFPG Settlement, then such condition may not be waived without the prior written consent of
10 Ambac, Assured Guaranty, or NPFPG, as applicable. Any such waiver of a condition may be
11 effected at any time, without notice or leave or order of the Bankruptcy Court and without any
12 formal action, other than the filing of a notice of such waiver with the Bankruptcy Court.

13 D. Effect of Failure of Conditions.

14 In the event that the conditions to effectiveness of this Plan have not been timely
15 satisfied or waived, and upon notification submitted by the City to the Bankruptcy Court, (i) the
16 Confirmation Order shall be vacated, (ii) no distributions under this Plan shall be made, (iii) the
17 City and all holders of Claims shall be restored to the status quo ante as of the day immediately
18 preceding the Confirmation Date as though the Confirmation Date never occurred, and (iv) all of
19 the City's obligations with respect to the Claims shall remain unchanged and nothing contained
20 herein shall be deemed to constitute a waiver or release of any claims by or against the City or
21 any other entity or to prejudice in any manner the rights, remedies, or claims of the City or any
22 entity in any further proceedings involving the City.

23 E. No Admission of Liability.

24 The Plan constitutes a settlement and compromise between and among the City
25 and various parties. The Plan shall not be deemed an admission or concession by any party with
26 respect to any factual or legal contention, right, defense, or position taken by the City.
27
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1 XIV. MISCELLANEOUS PROVISIONS

2 A. Dissolution of the Retirees Committee.

3 On the Effective Date, the Retirees Committee shall be released and discharged of
4 and from all further authority, duties, responsibilities, and obligations relating to and arising from
5 and in connection with the Chapter 9 Case, and the Retirees Committee shall be deemed
6 dissolved and its appointment terminated.

7 B. Severability.

8 If any term or provision of this Plan is held by the Bankruptcy Court or any other
9 court having jurisdiction, including on appeal, if applicable, to be invalid, void, or unenforceable,
10 the Bankruptcy Court, in each such case at the election of and with the consent of the City, shall
11 have the power to alter and interpret such term or provision to make it valid or enforceable to the
12 maximum extent practicable, consistent with the original purpose of the term or provision held to
13 be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered
14 or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of
15 the terms and provisions of this Plan shall remain in full force and effect and shall in no way be
16 affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation
17 Order shall constitute a judicial determination and shall provide that each term and provision of
18 this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and
19 enforceable pursuant to its terms.

20 C. Governing Law.

21 Except to the extent that the Bankruptcy Code or other federal law is applicable, or
22 to the extent that an exhibit hereto or Plan Document provides otherwise, the rights, duties, and
23 obligations arising under this Plan shall be governed by, and construed and enforced in
24 accordance with, the laws of the State of California, without giving effect to principles of
25 conflicts of laws.

26 D. Effectuating Documents and Further Transactions.

27 Each of the officials and employees of the City is authorized to execute, deliver,
28 file, or record such contracts, instruments, releases, indentures, and other agreements or

documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and provisions of this Plan.

E. Notice of Effective Date

On or before 14 days after occurrence of the Effective Date, the City or its agent shall mail or cause to be mailed to all holders of Claims the Notice of the Effective Date, which will inform such holders of: (a) entry of the Confirmation Order; (b) the occurrence of the Effective Date; (c) the assumption and rejection of the City's executory contracts and unexpired leases pursuant to this Plan, as well as the deadline for the filing of Claims arising from such rejection; (d) the deadline established under this Plan for the filing of Administrative Claims; (e) the procedures for changing an address of record pursuant to Section IX; and (f) such other matters as the City deems to be appropriate.

DATED: August 8, 2014

CITY OF STOCKTON, CALIFORNIA

By: 

Kurt O. Wilson
City Manager

Submitted By:

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: /s/ Marc A. Levinson

Marc A. Levinson
Jeffery D. Hermann
Norman C. Hile
Patrick B. Bocash
John A. Farmer

Attorneys for the City of Stockton

EXHIBIT A
TO
THE FIRST AMENDED PLAN FOR THE ADJUSTMENT OF DEBTS OF CITY OF
STOCKTON, CALIFORNIA AS MODIFIED (AUGUST 8, 2014)

DESCRIPTION OF MARINA PROJECT REAL PROPERTY

All interests or rights in and to that certain real property situated in the County of San Joaquin,
State of California, described by the assessor parcel numbers listed below:

APN: 137-010-02

APN: 137-010-03

APN: 137-010-08

APN: 137-010-06

APN: 137-260-30

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Re: *Paul Singh, et al. v. City of Stockton, et al.*
Case No.: 39-2015-00328676-CU-CR-STK

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 600 South Indian Hill Boulevard, Claremont, California 91711.

On November 25, 2015, I served the foregoing documents described as **FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL** on the interested parties in this action by placing ___ the original XX a true copy thereof enclosed in sealed envelopes addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

☒ MAIL I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Claremont, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

☐ BY FACSIMILE ("FAX") In addition to the manner of service indicated above, a copy was sent by FAX to the parties indicated on the service List.

☐ BY OVERNIGHT MAIL/COURIER To expedite service, copies were sent via FEDERAL EXPRESS.

☐ VIA EMAIL I caused the document to be served via electronic mail to the email addresses listed on the service list

☐ BY PERSONAL SERVICE I caused to be delivered such envelope by hand to the individual(s) indicated on the service list.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 25, 2015, at Claremont, California.


CYNTHIA GUTIERREZ

Re: *Paul Singh, et al. v. City of Stockton, et al.*
Case No.: 39-2015-00328676-CU-CR-STK

SERVICE LIST

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Attorneys for Defendant
OFFICER PATRICK MAYER;
CITY OF STOCKTON [also sued as
STOCKTON POLICE DEPARTMENT]
and all 32 individual officers

EXHIBIT K

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1 MARC A. LEVINSON (STATE BAR NO. 57613)
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City of Stockton

8
9 UNITED STATES BANKRUPTCY COURT
10 EASTERN DISTRICT OF CALIFORNIA
11 SACRAMENTO DIVISION
12

13 In re:
14 CITY OF STOCKTON, CALIFORNIA,
15 Debtor.

Case No. 2012-32118

D.C. No. BN-1

Chapter 9

16 ORDER APPROVING STIPULATION
17 BETWEEN THE CITY OF STOCKTON
AND THE SINGH FAMILY

18 Date: March 29, 2016
19 Time: 11:00 a.m.
20 Dept: Courtroom 35
Judge: Hon. Christopher M. Klein

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March 15, 2016
CLERK, U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
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ORDER APPROVING STIPULATION BETWEEN
CITY OF STOCKTON AND THE SINGH FAMILY

Pursuant to the stipulation (the "Stipulation") entered into between the City of Stockton, California (the "City") and Paul Singh, individually and as successor in interest to decedent Misty Holt-Singh, Paul Singh Jr., individually, and Mia Singh, by and through her guardian ad litem Paul Singh (collectively, the "Singh Family"), and good cause appearing therefor:

IT IS HEREBY ORDERED that the Stipulation, a copy of which is attached hereto as Exhibit "A", is approved, and;

IT IS FURTHER ORDERED that the approval of the Stipulation fully resolves the disputes raised by the Singh Family's Motion Confirming Allowance Of Claim And Determining Scope Of The Debtor's Post-Confirmation Discharge Injunction Upon Claim Adjudication [Dkt. No. 2468], including the City's Objection To Portions Of Declaration Of Gregory L. Bentley In Support Of The Motion Confirming Allowance Of Claim, Etc. [Dkt. No. 2480], and;

IT IS FURTHER ORDERED that the hearing and briefing schedule in this matter is vacated, and the previously-scheduled March 29, 2016, hearing shall be taken off the Court's calendar.

Dated: March 17, 2016


United States Bankruptcy Judge

APPROVED

/s/ Bernard D. Bollinger
Bernard D. Bollinger
Counsel for Singh Family

Exhibit A

7

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City of Stockton

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:
CITY OF STOCKTON, CALIFORNIA,
Debtor.

Case No. 12-32118
D.C. No. BN-1
Chapter 9

**STIPULATION BETWEEN THE CITY
OF STOCKTON AND THE SINGH
FAMILY REGARDING THE SINGH
FAMILY'S CLAIM**

Date: March 29, 2016
Time: 11:00 a.m.
Dept: Courtroom 35
Judge: Hon. Christopher M. Klein

The City of Stockton, California (the "City"), and Paul Singh, individually and as successor in interest to decedent Misty Holt-Singh, Paul Singh Jr., individually, and Mia Singh, by and through her guardian ad litem Paul Singh (collectively, the "Singh Family" or "Movants," and together with the City, the "Parties") hereby enter into the following stipulation ("Stipulation") and jointly request that the Court approve the Stipulation:

RECITALS

A. The City filed its chapter 9 petition on June 28, 2012, and the Bankruptcy Court for the Eastern District of California ("Bankruptcy Court") entered its Order For Relief [Dkt. No. 843] on April 1, 2013.

B. On July 16, 2014, Misty Holt-Singh perished during a bank robbery and hostage situation. The Singh Family timely filed a government claim with the City on February 4, 2015 pursuant to the California Government Claims Act, California Government Code § 810 *et seq.* ("Government Claim"), seeking damages against the City and others on account of the July 16, 2014, incident. The Singh Family contends and the City disputes that the filing of the Government Claim complied with the requirements of the City's First Amended Plan for the Adjustment of Debts of City of Stockton, California, as Modified (August 8, 2014) [Dkt. No. 1645] ("Plan") relating to the filing of proofs of claim.

C. Pursuant to California Government Code § 912.4, the City had 45 days (through March 21, 2015), to expressly reject or deny the Government Claim in writing. Absent express written rejection, the Government Claim is deemed rejected by operation of law. The City did not take any express action to reject or deny the Government Claim, and therefore the Government Claim was rejected by operation of law. The statute of limitations under state law for claims arising out of the July 16, 2014 incident ("Claims") within which the Singh Family may timely commence an action against the City and others as delineated in the Government Claim expires on July 16, 2016 – two years from the date the Claims arose.

D. On February 4, 2015, the Bankruptcy Court confirmed the Plan. The Plan went effective on February 25, 2015 ("Effective Date"). Pursuant to Article XI.B of the Plan and § 524(a)(1) and (a)(2) of the Bankruptcy Code, the occurrence of the Effective Date gave rise to an injunction against the commencement or continuation of legal actions seeking to recover preconfirmation debts as personal liabilities of the City or to recover against the property of the City on account of such debts ("Discharge Injunction").

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1 E. Article II.D of the Plan provides:

2 All proofs of claim for Other Postpetition Claims arising on or after August
3 16, 2013, and requests for payment or any other means of preserving and
4 obtaining payment of Administrative Claims that have not been paid,
5 released, or otherwise settled, and all requests for approval of Professional
6 Claims, must be filed with the Bankruptcy Court and served upon the City
no later than 30 days after the date on which the Notice of Effective Date is
served.

7 Plan, Article II.D at p. 32, ln. 14-19 (emphasis in original). The City's Notice of Effective Date
8 contained the same language.

9 F. The City's Notice of Effective Date was sent to Movants' counsel on
10 March 9, 2015. The City contends and the Singh Family disputes that the applicable bar date for
11 the Singh Family to file a proof of claim was therefore April 8, 2015.

12 G. The Singh Family initiated a lawsuit in the Superior Court for the County
13 of San Joaquin ("Superior Court"), case no. 39-2015-00328676-CI-CR-STK (the "Lawsuit"), by
14 the filing of a complaint on August 18, 2015. The complaint contained a prayer for damages
15 against the City, among other prayers for relief. The City filed a demurrer to the complaint on
16 October 14, 2015, arguing in part that the Singh Family's claims against the City were barred by
17 the Discharge Injunction resulting from confirmation of the Plan.

18 H. On November 20, 2015, the Singh Family filed with the Bankruptcy Court
19 their Amended Proof of Claim [Claim Nos. 305-1] purporting to amend the Government Claim.
20 The Government Claim, as purportedly amended, shall be referred to herein as the "Singh
21 Family Claim."

22 I. The Singh Family then filed a First Amended Complaint And Demand For
23 Jury Trial ("First Amended Complaint") in the Superior Court on November 25, 2015. The First
24 Amended Complaint also contains a prayer for damages against the City, among other prayers
25 for relief.

26 J. On January 19, 2016, the Singh Family filed its Motion Confirming
27 Allowance Of Claim And Determining Scope Of The Debtor's Post-Confirmation Discharge
28 Injunction Upon Claim Adjudication [Dkt. No. 2468] ("Singh Motion") with the Bankruptcy

1 Court. The City filed an opposition to the Singh Motion on February 9, 2016 [Dkt. No. 2479],
2 and the Singh Family replied on February 16, 2016 [Dkt. No. 2484].

3 K. The Singh Family contends and the City disputes that the Singh Family
4 Claim is not time barred by either Article II.D of the Plan or the subsequent Notice of Effective
5 Date proof of claim filing requirements.

6 L. The Bankruptcy Court held an initial hearing on the Singh Motion on
7 February 23, 2016 and has set a continued hearing for March 29, 2016; as of the date of this
8 Stipulation, the Bankruptcy Court has not ruled on the Singh Motion.

9 **STIPULATION**

10 Based on the forgoing Recitals and on the facts particular to the Singh Family (and to no
11 other person or such other persons' claims against the City), the Parties agree as follows:

12 1. Pursuant to Article XIA of the Plan and § 944 of the Bankruptcy Code,
13 confirmation of the Plan discharged all non-excepted, pre-confirmation debts of the City in
14 exchange for the rights afforded in the Plan and the treatment of all holders of Claims (as the
15 term "Claims" is defined in the Plan). The Singh Family Claim was not excepted from such
16 discharge.

17 2. The Government Claim shall be deemed to be a timely filed proof of
18 claim pursuant to the Ninth Circuit's informal proof of claim doctrine under *In re Sambo's*
19 *Restaurants, Inc.*, 754 F.2d 811, 812 (9th Cir. 1983), and its progeny. The Amended Proof of
20 Claim shall be deemed to be a properly and timely filed amendment to the Government Claim.

21 3. The Lawsuit is void pursuant to Bankruptcy Code § 524(a), and the Singh
22 Family shall dismiss the Lawsuit without prejudice within 14 days from the entry of a final, non-
23 appealable order approving this Stipulation. Each of the Parties agrees not to appeal the order
24 approving this Stipulation.

25 4. The statute of limitations under state law for the Singh Family to
26 commence an action against the City among others on account of the Claims expires on July 16,
27 2016.

1 5. Conditioned upon the dismissal without prejudice of the Lawsuit, a
2 dismissal to which the City will not object, the Singh Family shall be granted partial relief from
3 the Discharge Injunction in order to commence a new action in the Superior Court to litigate all
4 causes of action against the City, among other parties, on the underlying Claims (the "New
5 Action"). The Parties agree that the legal and factual merits of the Claims shall be determined
6 by the Superior Court, and that the Superior Court has jurisdiction to determine the validity and
7 amount of the Claims.

8 6. The complaint in the New Action shall state that: (1) any judgment,
9 settlement, or other final determination obtained by the Singh Family against the City shall be
10 treated in accordance with the terms of the Plan for claimants holding claims classified in Class
11 14 – Claims of Certain Tort Claimants; and (2) the Singh Family shall not execute on any
12 judgment or settlement or seek recovery as against the City or any property of the City except as
13 provided for in the Plan.

14 7. Upon entry of any judgment, settlement or other final determination in the
15 New Action of the validity and the amount of the causes of action underlying the Singh Family
16 Claim, the City will be legally obligated to pay as damages such judgment, settlement, or other
17 final determination subject to the provisions of the Plan, including but not limited to, the
18 application of the discount as provided for in the treatment of Class 14 – Claims of Certain Tort
19 Claimants in which the Singh Family Claim was placed. Notwithstanding any such judgment,
20 settlement, or other final determination, the Singh Family shall waive only its right to collect the
21 SIR Claim Portion (as "SIR Claim Portion" is defined in the Plan) of the Singh Family Claim
22 which the City would be required to pay to the Singh Family under the Plan.

23 8. As set forth in the Plan, "[t]he Insured Portion of each Allowed General
24 Liability Claim is not Impaired, and shall be paid by the applicable excess risk-sharing pool."
25 This Stipulation is not intended in any way to impair, restrict, diminish or enlarge the Singh
26 Family's ability to recover the Insured Portion (as "Insured Portion" is defined in the Plan) of
27 any eventual judgment, settlement, or award against the City from the applicable excess risk
28

1 sharing pool. For the avoidance of any doubt, the "property of the City" referenced in paragraph
2 6 does not include the Insured Portion.

3 9. Except as expressly provided in this Stipulation, all rights of the City to
4 object to or defend against the claims in the New Action on any ground are expressly preserved.
5 However, so long as the complaint and other allegations in the New Action are consistent with
6 the statements in Paragraph 6 of this Stipulation, the City shall not assert in the New Action that
7 (1) the Discharge Injunction prohibits the Singh Family from pursuing the New Action in the
8 Superior Court, or (2) the New Action is barred by the applicable statute of limitations as long as
9 the New Action is filed by July 16, 2016.

10 10. The Parties consent to the entry of an order approving this Stipulation by
11 the Bankruptcy Court.

12 11. The Parties each shall pay their respective fees and costs arising out of the
13 Singh Motion, including the fees and costs relating to this Stipulation.

14 12. This Stipulation may be executed in facsimile or electronic counterparts
15 and shall be deemed complete and effective as if it were executed as one original document.

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1 13. The Bankruptcy Court's order approving this Stipulation shall fully
2 resolve the disputes raised in the Singh Motion, including the City's objection to a portion of the
3 supporting Gregory L. Bentley Declaration [Dkt. No. 2480].
4

5
6 Dated: March 15, 2016

BUCHALTER NEMER, PC

7
8 By: /s/ Bernard D. Bollinger
9 Bernard D. Bollinger, Jr., Esq.
10 Attorneys for Tort Claimants
11 Paul Singh, Paul Singh, Jr., and Mia Singh

12 Dated: March 15, 2016

ORRICK, HERRINGTON & SUTCLIFFE LLP

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14
15 By: /s/ Marc A. Levinson
16 Marc A. Levinson
17 Attorneys for City of Stockton, Debtor
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FILED
SUPERIOR COURT - STOCKTON

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

STEPHANIE KOUSSAYA,

Plaintiff,

vs.

CITY OF STOCKTON; STOCKTON POLICE
DEPARTMENT; OFFICER MARK BOLING;
OFFICER DAVID BROWN; OFFICER BRAD
BURRELL; OFFICER GEORGE CAMACHO;
OFFICER RALPH DOMINGUEZ; OFFICER
PANCHE FREER; OFFICER MATTHEW
GARLICK; OFFICER ERIKA GONZALEZ;
OFFICER JOHN GRIFFIN; OFFICER
GABRIEL GUERRERO; OFFICER DAVID
HILAND; OFFICER CLIFF HOFFMAN;
OFFICER RODGER HOLSCHER; OFFICER
KEVIN KNALL; OFFICER SEAN
KONOSKE; OFFICER PATRICK MAYER;
OFFICER KRISTEN MCCLURE; OFFICER
JULIO MORALES; OFFICER RYAN
MORRIS; OFFICER RYAN RANKIN;
OFFICER MIKE RODRIGUEZ; OFFICER
IVAN ROSE; OFFICER LANCE SAUR;
OFFICER MICHAEL SERNA; OFFICER
PETE SMITH; OFFICER TELLY STRIKA;
OFFICER JASON UNDERWOOD; OFFICER
NETO URIAS; OFFICER SAMNANG VEN;
OFFICER EDWARD WEBB; OFFICER
DRAKE WIEST; OFFICER RONALD
ZALUNARDO; and DOES 1 to 100,
Inclusive,

Defendants.

CASE NO.: SJ-CV-UNPI-2016-3703

COMPLAINT FOR VIOLATION OF CIVIL
RIGHTS; ASSAULT & BATTERY;
INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS; NEGLIGENCE
AND DAMAGES

JURY TRIAL DEMANDED

PIERING LAW FIRM
775 University Avenue
Sacramento, CA 95825
(916) 446-1944

Complaint for Violation of Civil Rights, etc.

THIS CASE HAS BEEN ASSIGNED TO
JUDGE LINDA L. LOFTHUS IN
DEPARTMENT 11 FOR ALL PURPOSES,
INCLUDING TRIAL

I.

INTRODUCTION

This case arises out of the civil rights violation of plaintiff Stephanie Koussaya at the hands of the defendants during the afternoon of July 16, 2014.

II.

PARTIES

1. Plaintiff Stephanie Koussaya is, and at all times herein mentioned was, a resident of the county of San Joaquin.

2. Defendant City of Stockton is a governmental entity, duly organized and existing under the laws of the State of California.

3. Defendant Stockton Police Department is, and at all times herein mentioned was, an agent of defendant City of Stockton.

4. Defendants Officer Mark Boling, Officer David Brown, Officer Brad Burrell, Officer George Camacho, Officer Ralph Dominguez, Officer Pancho Freer, Officer Matthew Garlick, Officer Erika Gonzalez, Officer John Griffin, Officer Gabriel Guerrero, Officer David Hiland, Officer Cliff Hoffman, Officer Rodger Holscher, Officer Kevin Knall, Officer Sean Konoske, Officer Patrick Mayer, Officer Kristen McClure, Officer Julio Morales, Officer Ryan Morris, Officer Ryan Rankin, Officer Mike Rodriguez, Officer Ivan Rose, Officer Lance Saur, Officer Michael Serna, Officer Pete Smith, Officer Telly Strika, Officer Jason Underwood, Officer Neto Urias, Officer Samnang Ven, Officer Edward Webb, Officer Drake Wiest, and Officer Ronald Zalunardo are, and at all relevant times herein were, employed as law enforcement officers by Defendant City of Stockton, and were acting within the course and scope of their employment. These defendants are being sued in their individual capacity. Based upon information and belief, each of these officers fired on the vehicle.

5. Plaintiff is ignorant of the true names and capacities of defendants sued herein as Does 1 through 100, inclusive, and therefore sues these defendants

1 by such fictitious names and capacities. Plaintiff will amend this complaint to allege
2 their true names and capacities when the same is ascertained. Plaintiff is informed
3 and believes and thereon alleges that each of the fictitiously named defendants are
4 responsible in some manner for the occurrences herein alleged, and that Plaintiff's
5 injuries as herein alleged were legally caused by said acts and/or omissions.

6 6. Plaintiff has complied with the administrative tort claims requirement
7 under California law.

8 **III.**

9 **STATEMENT OF FACTS**

10 7. On or about July 16, 2014, plaintiff was working as a bank teller at the
11 Bank of the West located at the corner of 7810 Thornton Road in Stockton, CA in
12 the City of Stockton. The bank was known by the defendants to have been robbed
13 in the past and was situated in a high crime area in a city where crime rates were
14 already far above national averages.

15 8. On January 31, 2014, the bank was robbed by Gilbert Renteria Jr. and
16 Alex Gregory Martinez. The two men entered the bank on foot with guns and
17 robbed the bank. As part of their escape plan, the men demanded the keys to a
18 car from a bank employee. They then asked where the car was parked and exited
19 the bank, turning; however, in the wrong direction from where the car was parked.
20 After looking for the car for a short period of time, Renteria and Martinez were able
21 to locate the vehicle and fled making their successful escape without further
22 incident. During this robbery, neither Renteria nor Martinez threatened to take
23 hostages and neither of them were apprehended by law enforcement, even though
24 the defendants had sufficient information and evidence to identify and arrest one or
25 both robbers prior to July 16, 2014.

26 9. On July 16, 2014, Gilbert Renteria, Jr., Alex Gregory Martinez and
27

1 Jaime Ramos ("the robbers") returned to rob the bank once again. As in the
2 previous robbery, the robbers approached the bank on foot, after being dropped off
3 by an accomplice. When the robbers entered the bank, a bank employee activated
4 a silent alarm notifying the City of Stockton police department of the robbery in
5 progress. The robbers were unaware of alarm notification and after they entered
6 the bank they followed the same routine as they had in the successful January 2014
7 robbery. They gathered everyone into one area and then directed the bank
8 manager to take them to the bank vault. During the entire time of the robbery, the
9 robbers assured and reassured Plaintiff and others in the bank that no one would be
10 hurt as long as they followed directions.

11 10. Once the robbers secured the money from the bank, they demanded
12 keys to a car from one of the people inside of the bank just as they had done in the
13 January 31, 2014 robbery. The bank's manager, Kelly Huber, recognizing the
14 robbers and their method of operation from the prior robbery in January, offered
15 the keys to her car. To avoid any confusion with respect to the location of the car,
16 the robbers requested Huber exit the bank with them to identify the exact location
17 of her vehicle. Huber then exited the bank with the robbers to show the robbers
18 the location of her vehicle. Plaintiff was left in the bank unharmed and safe inside
19 the bank.

20 11. During the robbery, a Stockton police car arrived at the scene and
21 pulled up alongside the Bank parking lot with its lights on. Shortly thereafter,
22 another police car arrived and parked on the side of the Bank parking lot. A third
23 police car parked in the parking lot, fully visible to those exiting the bank. As the
24 robbers left the bank with only Huber, they were met by defendant Stockton police
25 officers with guns drawn who yelled threatening remarks and forced all three
26 robbers back into the bank. In response to the verbal and physical threats of the
27 defendants, the robbers grabbed Huber and used her as a human shield as they
28 retreated back into the bank where other bank customers and employees safely
remained until the robbers were forced back into the bank. Once they reentered

1 the bank, the robbers grabbed Misty Holt-Singh and plaintiff and then exited the
2 bank with the Huber, Misty Holt-Singh and plaintiff at gunpoint.

3 12. The three gunmen left the bank with the 3 hostages and entered
4 Huber's Explorer. Huber was ordered to drive, with one suspect placed in the
5 passenger seat, another between Misty and plaintiff in the back seat, and a third
6 suspect in the very back of the vehicle.

7 13. The police began pursuit through residential streets, firing their
8 weapons numerous times at the vehicle containing the hostages. The pursuit
9 ultimately lasted approximately one hour and went onto city and residential streets
10 in both Lodi and Stockton.

11 14. At 14:18:34, just two minutes after leaving the bank, Huber was
12 accidentally shot in the leg by robber Jaimie Ramos. The bullet wound
13 incapacitated Huber and she was no longer able to drive the vehicle. The robbers
14 then opened the driver's side door and forced the bank manager out of the car.
15 Suspect Renteria then assumed control of the vehicle and accelerated north on
16 Thornton Road with multiple law enforcement vehicles in pursuit.

17 15. During the ensuing pursuit, more and more police officers from
18 defendant City of Stockton joined in the chase, and thereby escalated and
19 continued to escalate the desperation of the robbers as they attempted to evade
20 the police. There was no established chain of command, no established course of
21 action, no limit imposed on the number of officers from defendant Stockton Police
22 Department who joined in the pursuit, no rules established to contain or diffuse the
23 pursuit and general disregard for the well-being and safety of plaintiff and Holt-
24 Singh. Indeed, police officers of defendant City of Stockton identified herein shot
25 at the suspect vehicle as the robbers made their escape knowing all the while that
26 innocent victims plaintiff and Holt Singh were in the car and were being held and
27 used as shields against the defendant officers' gunfire and pursuit. As the pursuit
28 continued, plaintiff recognized that if she did not get out of the car, she would be
killed by the defendants. Desperately, plaintiff decided her only chance at survival

1 was to jump from the moving car which she luckily did at 15:15:54, just two (2)
2 minutes before the police defendants disabled the suspect car and 32 officers shot
3 as many as 600 indiscriminate bullets into the car, killing two of the robbers and
4 the remaining innocent victim Misty Holt-Singh. Notably, all the bullets found in the
5 body of Misty Holt-Singh were fired by police officers, not by the robbers.

6 16. The hostage situation would not have arisen if the defendants, and
7 each of them, had followed their own armed robbery protocols and general orders
8 by staying out of sight until the robbers separated from innocent victims and/or
9 hostages. This failure to follow established general orders and protocol caused the
10 robbers to take hostages and allowed the robbers to use hostages to become
11 human shields in an effort to escape. Had the police followed general orders and
12 proper protocol and remained inconspicuous until the robbers were away from the
13 innocent victims, none of the victims would have been taken hostage and made to
14 suffer the physical, emotional and permanent harms sustained as alleged more
15 particularly below. In fact, the robbers would have driven away without any
16 hostages as they had in the first robbery. Instead, hostages were taken, one
17 hostage was killed by the police, another victim was shot in her right leg and
18 plaintiff was compelled to jump out of a moving car because of the police pursuit
19 and bullets being shot into the car by the defendants. By pursuing, shooting at
20 and ultimately stopping the vehicle, the defendants seized all persons, including
21 plaintiff, in the vehicle.

22 17. Plaintiff is informed and believes and thereon alleges that her injuries
23 were a direct and foreseeable harm resulting from defendants' failure to exercise
24 the duty of care owed to plaintiff, by both their intentional use of deadly and
25 excessive force and in the use of deadly weapons in attempting to pursue the
26 vehicle plaintiff was known to be in. The use of unreasonable deadly force by
27 Stockton Police officers is not uncommon. Within the last six years alone Stockton
28 Police officers shot 27 individuals, killing 17.

1 18. The above-described acts, omissions, intentional and/or negligent
2 conduct by defendants was and is the factual and legal cause of plaintiff's damages
3 as hereinafter set forth.

4 19. Plaintiff is informed and believes and thereon alleges that defendant
5 City of Stockton by and through its supervisory employees and agents, has and had
6 a mandatory duty of care to properly and adequately hire, train, retrain, supervise,
7 and discipline its police officers/deputies so as to avoid unreasonable risk of harm.
8 With deliberate indifference, the defendants, and each of them, failed to take
9 necessary, proper, and/or adequate measures to prevent the violation of plaintiff's
10 rights and violated general orders and standard bank robbery procedures in their
11 response to the robbery and pursuit of the robbers.

12 20. Plaintiff is informed and believes and thereon alleges that defendants
13 City of Stockton, Stockton Police Department and DOES 1 through 100, and each of
14 them, breached their duty of care to the public and plaintiff in that they failed to
15 adequately train, supervise, and discipline their officers in the proper response to
16 robberies, making of detentions, pursuit, arrests and in the use of deadly force.

17 21. The lack of supervisorial training demonstrates the existence of a
18 formal or an informal custom, policy or practice of promoting, tolerating, and/or
19 ratifying with deliberate indifference the continued use of deadly and excessive
20 force against suspects, detainees and in particular, plaintiff herein, by the
21 defendants, and each of them.

22 22. The Defendants, and each of them, acted under color of law by
23 subjecting plaintiff without lawful justification to excessive force thereby depriving
24 plaintiff of certain constitutionally protected rights, including, but not limited to:

25 a. The right to be free from unreasonable searches and seizures, as
26 guaranteed by the Fourth and Fourteenth Amendments to the United States
27 Constitution;

1 b. The right to not be deprived of life and liberty without due process of
2 law, as guaranteed by the Fifth and Fourteenth Amendments to the United States
3 Constitution;

4 c. The right to be free from the use from excessive force by police
5 officers, which is guaranteed by the Fourth, Fifth, and Fourteenth Amendments to
6 the United States Constitution;

7 d. The right to be free from interference within the zone of privacy, as
8 protected by the Fourth and Ninth Amendments to the United States Constitution.

9 e. The right to be free from deprivation of life and/or liberty, protected by
10 the Fourteenth Amendment to the United States Constitution.

11 **A.**

12 **The Stockton Police Department failed to follow standard,**
13 **well-established robbery, response, pursuit and apprehension**
14 **protocols.**

15 23. The Stockton Police department failed to follow standard and well-
16 recognized protocol when responding to the In-progress armed bank robbery. The
17 first arriving officers should arrive in stealth to avoid detection by the perpetrators.
18 Officers want to preserve the element of surprise to avoid a hostage situation in
19 which the people inside the bank may be harmed. In other words, the officers do
20 not want the criminals to know of their presence because doing so would endanger
21 the innocent victims inside the establishment and create a hostage situation that
22 may not otherwise exist.

23 24. This fundamental protocol is set forth in the 1992 Model Policy for a
24 Bank Alarm Response from the IACP National Law Enforcement Policy Center (Dept
25 of Justice) as follows:

26 **B. Responding Officer Procedures**

- 27 1. Responding officers shall use appropriate vehicular warning devices when
28 approaching the scene, but the siren will not be used within the hearing
range of the reported robbery.

- 1
2 3. The first unit on the scene shall serve as the primary unit until relieved by
3 a supervisor, and shall take a position in front of the facility that provides
4 good observation without being easily visible to those inside. The primary
5 unit shall report on observable conditions at the location to the dispatcher
6 but should not initially approach the building.

7 25. The Stockton Police Department's General Order for Robbery Alarms
8 (including Hold-Up Alarms and Bank Alarms) sets forth this same requirement that
9 the initial officers responding to the scene should avoid detection because a
10 "hostage situation could be initiated by police response being recognized by the
11 robbers."

12 STOCKTON POLICE DEPARTMENT

13 GENERAL ORDER

14 ROBBERY ALARMS
15 SUBJECT

16 DATE: March 1, 2005

17 NO: N-1

18 FROM: CHIEF THOMAS T. MORRIS

19 TO: ALL PERSONNEL

20 INDEX: Alarm Calls
21 Robbery Alarms
22 Hold-up Alarms
23 Bank Alarms

24 B. Bank and Business Robbery Alarms

- 25 1. Immediately upon receipt of a holdup alarm from a bank or business by the
26 Telecommunications Center, or telephone call of a robbery in progress, field units
27 normally will be informed on all six radio channels and the Telecommunications Center
28 will dispatch a minimum of three units to the scene.
2. Assigned responding units shall give their location upon receiving the call and will answer
the radio as dispatched.
- a. Units will respond "Code 3" and may discontinue the use of red lights and siren
when close to arrival and respond the remainder of the distance in accordance
with traffic laws. The exact time to discontinue "Code 3" response is to be
decided by each individual member assigned to respond, taking into
consideration the fact a hostage situation could be initiated by police response
being recognized by the robbers.

29 26. Instead, as confirmed by video footage, the City of Stockton's police
30 arrived at the Bank of the West with lights on and took positions that were in full

1 view of the bank robbers. Instead of allowing the gunmen to continue leaving the
2 Bank as was originally planned, the police's flawed response forced the gunmen
3 back into the bank, where they then took hostages, including Misty Holt-Singh and
4 plaintiff, and fled in Huber's vehicle.



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13 (Photograph showing an officer in full view of the Bank windows.)

14
15 27. The department's negligent, reckless, intentional actions continued
16 for well over an hour. Instead of trying to preserve the safety of the known
17 innocent hostages, the Stockton Police Department engaged in a high-speed chase
18 through residential streets and public highways. During this chase, which lasted
19 over an hour, officers repeatedly discharged their weapons at the suspect vehicle
20 even though it was known there were innocent hostages inside. At such time, the
21 officers and their superiors were able to deliberate and had the opportunity to make
22 reasoned judgments in their apprehension and pursuit of the suspects. The failure
23 and inability of the police officers to effectively direct their deadly gunfire away
24 from plaintiff and Misty Holt-Singh during and immediately following the
25 termination of the pursuit, created an unreasonable risk of harm and ultimately
26 caused the death of Misty Holt-Singh and caused plaintiff severe and permanent
27 injury hereinafter alleged. This was counter to the primary police objective in
28 hostage taking situations—to first take all necessary steps to free innocent persons

1 who are endangered and held against their will. The chasing officers could have
2 withdrawn from the pursuit, scaled back or de-escalated their deadly pursuit,
3 allowing the police helicopter to visually track the escaping vehicle until all hostages
4 were free of the vehicle.

5 **B.**

6 **The Stockton police failed to train and supervise its employees to**
7 **follow up on known leads of one of the perpetrators following the**
8 **January 31, 2014 robbery.**

9 28. In the 30 months before the July 16, 2014 robbery, the Bank of the
10 West branch on Thornton Rd. in Stockton had been victimized by numerous armed
11 robberies. One of these robberies took place on January 31, 2014. That day,
12 Stockton police officers arrived at the scene shortly after the robbery and began
13 their investigation. After taking the statement of a bank employee, Officer Sandoval
14 on January 31, 2014, located a suspicious vehicle reported southwest of the bank
15 belonging to Gilbert Renteria, Jr., who was one of the gunmen from the January 31
16 robbery. The vehicle was impounded, and subsequently searched pursuant to a
17 warrant on February 4, 2014. Officers located Gilbert Renteria's California
18 Identification Card within the vehicle along with two large freezer bags of live
19 ammunition—one bag contained over 140 rounds of rifle ammunition.

20 29. Gilbert Renteria, Jr. matched the description of one of the suspects of
21 the January 31, 2014 robbery. Despite having located, identified, and impounded
22 the suspicious vehicle on January 31, 2014—registered to Gilbert Renteria, Jr.,
23 containing his identification and a store of live ammunition—the Stockton Police
24 Department failed to supervise its employees in following up on this important lead.
25 Renteria, who was a known criminal on parole and could have been arrested for
26 possessing firearms, continued to live in Stockton, and was never questioned about
27 his possible role in the robbery. The Stockton Police Department failed to manage,
28 direct, and ensure its officers and detectives followed protocol in investigating a
possible suspect in the January 2014 robbery.

30. Had there been any reasonable supervision of its employees by Stockton police, Renteria would have been apprehended long before having the opportunity to repeat the same crime on July 16, 2014. As a result, Renteria was never questioned or apprehended following the January 31, 2014 robbery. Renteria and Alex Martinez clearly felt that they could repeat virtually the exact same crime at the same location on July 16, 2014 without fear of being caught.

31. In addition, defendant City of Stockton and Stockton Police Department, department wide, failed to conduct reasonable training, supervision, and control of its officers in the response to possible hostage situations, failed to conduct reasonable training, supervision, and control of its officers in the pursuit and apprehension of armed suspects with hostages.

C.

The City of Stockton and Koussaya have agreed that Koussaya is granted partial relief from the bankruptcy discharge injunction in order to commence and prosecute this action

32. On June 28, 2012, prior to the events that caused severe and permanent injury to plaintiff and Huber, and took the life of Misty Holt-Singh, the City of Stockton filed its bankruptcy petition in the United States District Court, Eastern District of California, commencing a bankruptcy case (*In re City of Stockton, California*, Case No. 12-32118 (Bank. E.D. Cal.) and referenced by its pleadings as "Docket" throughout this section) under chapter 9 of title 11 of the United States Code (the "Bankruptcy Code").

33. The bankruptcy court entered its order for relief under 11 U.S.C. § 921(d) on April 1, 2013, finding that the petition satisfies the requirements under the Bankruptcy Code and that the City of Stockton was eligible for relief under chapter 9. See Docket No. 843.

34. Plaintiff timely filed a claim with the City of Stockton on January 8, 2015 pursuant to the Government Claims Act, California Government Code section 810 *et seq.* (See Exhibit "A", hereafter, "Government Claim"). At that time, the City

1 was formally placed on notice that plaintiff intended to hold them liable for injuries
2 she sustained in the incident. Over the next several months, plaintiff's counsel
3 corresponded with Stockton City Attorneys requesting documents relating to the
4 incident and the claims being advanced by plaintiff herein.

5 35. Plaintiff is the holder of a claim in the City's bankruptcy case
6 represented by an Amended Claim filed with the Bankruptcy Court on December 4,
7 2015. (A copy of the Amended Claim—with its own internal exhibits omitted—is
8 attached to this First Amended Complaint as Exhibit "B".)

9 36. On March 25, 2016, the City of Stockton and Koussaya reached a
10 stipulation in the Bankruptcy Court to permit this action to proceed. (See Exhibit
11 "C".) That stipulation was approved and entered as an order by the Bankruptcy
12 Court on March 29, 2016, and provides as follows:

- 13 a. Pursuant to Article XI.A of the Plan and § 944 of the Bankruptcy Code,
14 confirmation of the Plan discharged all non-excepted, pre-confirmation
15 debts of the City in exchange for the rights afforded in the Plan and
16 the treatment of all holders of Claims (as the term "Claims" is defined
17 in the Plan). The Koussaya Claim was not excepted from such
18 discharge. (Exhibit "C", Stipulation ¶ 1.)
- 19 b. Koussaya's Government Claim is deemed to be a timely filed proof of
20 claim pursuant to the Ninth Circuit's informal proof of claim doctrine
21 under *In re Sambo's Restaurants, Inc.*, 754 F.2d 811, 812 (9th Cir.
22 1983), and its progeny. The Amended Proof of Claim is deemed to be
23 a properly and timely filed amendment to the Government Claim.
24 (Exhibit "C", Stipulation ¶ 2.)
- 25 c. The statute of limitations under state law for Koussaya to commence
26 an action against the City among others on account of the Claims
27 expires on July 16, 2016. (Exhibit "C", Stipulation ¶ 4.)
- 28 d. Koussaya has been granted partial relief from the Discharge Injunction
in order to commence a new action—this action—in the Superior Court

1 to litigate all causes of action against the City, among other parties, on
2 the underlying Claims (the "New Action"). Koussaya and the City of
3 Stockton agreed that the legal and factual merits of the Claims shall be
4 determined by the Superior Court, and that the Superior Court has
5 jurisdiction to determine the validity and amount of the Claims.
6 (Exhibit "C", Stipulation ¶ 5.)

- 7 e. The complaint in the New Action is to state—as it does here—that: (1)
8 any judgment, settlement, or other final determination obtained by
9 Koussaya against the City will be treated in accordance with the terms
10 of the Plan for claimants holding claims classified in Class 14 – Claims
11 of Certain Tort Claimants; and (2) Koussaya will not execute on any
12 judgment or settlement or seek recovery as against the City or any
13 property of the City except as provided for in the Plan. (Exhibit "C",
14 Stipulation ¶ 6.)
- 15 f. Upon entry of any judgment, settlement or other final determination in
16 the New Action of the validity and the amount of the causes of action
17 underlying the Koussaya Claim, the City will be legally obligated to pay
18 as damages such judgment, settlement, or other final determination
19 subject to the provisions of the Plan, including but not limited to, the
20 application of the discount as provided for in the treatment of Class 14
21 – Claims of Certain Tort Claimants in which the Koussaya Claim was
22 placed. Notwithstanding any such judgment, settlement, or other final
23 determination, Koussaya shall waive only her right to collect the SIR
24 Claim Portion (as "SIR Claim Portion" is defined in the Plan) of the
25 Koussaya Claim which the City would be required to pay to Koussaya
26 under the Plan. (Exhibit "C", Stipulation ¶ 7.)
- 27 g. As set forth in the Plan, "[t]he Insured Portion of each Allowed General
28 Liability Claim is not Impaired, and shall be paid by the applicable
excess risk-sharing pool." The stipulation between the City of the

1 Stockton and Koussaya was not intended in any way to impair,
2 restrict, diminish or enlarge Koussaya's ability to recover the Insured
3 Portion (as "Insured Portion" is defined in the Plan) of any eventual
4 judgment, settlement, or award against the City from the applicable
5 excess risk sharing pool. For the avoidance of any doubt, the
6 "property of the City" referenced in paragraph 36(e) above does not
7 include the Insured Portion. (Exhibit "C", Stipulation ¶ 8.)

- 8 h. Except as expressly provided in Exhibit "C", all rights of the City to
9 object to or defend against the claims in the New Action on any ground
10 are expressly preserved. However, so long as the complaint and other
11 allegations in the New Action are consistent with the statements in
12 Paragraph 6 of the Stipulation—which they are—the City shall not
13 assert in the New Action that (1) the Discharge Injunction prohibits
14 Koussaya from pursuing the New Action in the Superior Court, or
15 (2) the New Action is barred by the applicable statute of limitations as
16 long as the New Action is filed by July 16, 2016. (Exhibit "C",
17 Stipulation ¶ 9.)

18 IV.

19 DAMAGES

20 37. As a legal result of Defendants' violation of Plaintiff's civil rights under
21 42 U.S.C. §1983; the Fourteenth Amendment, Civil Code sections 52.1, 51.7, et
22 seq.; the assault, battery, intentional infliction of emotional distress and negligence,
23 Plaintiff was injured in her health, strength, and activity, sustaining injury to her
24 body and shock and injury to her nervous system and person, all of which injuries
25 have caused and continue to cause Plaintiff mental, physical, and nervous pain and
26 suffering.

27 38. As a further legal result of Defendants' violation of Plaintiff's civil rights
under 42 U.S.C. §1983; the Fourteenth Amendment, Civil Code sections 52.1, 51.7,

1 et seq.; the assault, battery, intentional infliction of emotional distress and
2 negligence, Plaintiff was required to and did and will continue to be required to
3 employ physicians and other medical experts for medical examination, treatment
4 and cure of her injuries, and did incur and will continue to incur medical and
5 incidental expenses in an amount to be determined according to proof at trial

6 39. As a further legal result of Defendants' violation of Plaintiff's civil rights
7 under 42 U.S.C. §1983; the Fourteenth Amendment, Civil Code sections 52.1, 51.7,
8 et seq.; the assault, battery, intentional infliction of emotional distress and
9 negligence, Plaintiff was subjected to lost earnings, loss of earning capacity, time
10 and energy all to her further damage in an amount to be determined according to
11 proof at trial.

12 40. As a further legal result of Defendants' violation of Plaintiff's civil rights
13 under 42 U.S.C. §1983; the Fourteenth Amendment, Civil Code sections 52.1, 51.7,
14 et seq.; the assault, battery, intentional infliction of emotional distress and
15 negligence, Plaintiff was subjected to property damage, loss of use, consequential
16 damages, and other economic damages all to her further damage in an amount to
17 be determined according to proof at trial.

18 41. Plaintiffs found it necessary to engage the services of private counsel
19 to vindicate plaintiff's rights under the law. Plaintiff is therefore entitled to an award
20 of attorneys' fees and/or costs pursuant to statute(s) in the event that he is a
21 prevailing party in this action under 42 U.S.C. §§§1983, 1985-86 and 1988 and
22 other statutes and legal authorities.

23 **FIRST CAUSE OF ACTION**

24 **Violation of Fourth Amendment of the United States Constitution**
25 **(42 U.S.C. §1983)**

26 42. Plaintiff incorporates by reference herein, repleads and realleges
27 paragraphs 1 through 41 of this complaint as though fully set forth herein.

28 43. Defendants' above-described conduct violated Plaintiff's rights as

1 provided for under the Fourth Amendment to the United States Constitution to be
2 free from unreasonable seizures.

3 WHEREFORE, plaintiff prays judgment against the defendants, and each of
4 them, as hereinafter set forth.

5 **SECOND CAUSE OF ACTION**

6 **Violation of Fourth Amendment of the United States Constitution**
7 **(42 U.S.C. §1983)**

8 44. Plaintiff incorporates by reference herein, repleads and realleges
9 paragraphs 1 through 43 of this complaint as though fully set forth herein.

10 45. Defendants' above-described conduct violated Plaintiff's right as
11 provided for under the Fourth Amendment to the United States Constitution to be
12 free from excessive force and/or the arbitrary and/or unreasonable use of deadly
13 force against her.

14 WHEREFORE, plaintiff prays judgment against the defendants, and each of
15 them, as hereinafter set forth

16 **THIRD CAUSE OF ACTION**

17 **Violation of Fourteenth Amendment of the United States Constitution**
18 **(42 U.S.C. §1983)**

19 46. Plaintiff incorporates by reference herein, repleads and realleges
20 paragraphs 1 through 45 of the this complaint as though fully set forth herein.

21 47. Defendants' above-described conduct violated Plaintiff's right as
22 provided for under the Fourteenth Amendment to the United States Constitution to
23 be free from deprivation of life and/or liberty, showing callous disregard and
24 deliberate indifference towards the rights and interests of plaintiff.

25 WHEREFORE, plaintiff prays judgment against the defendants, and each of
26 them, as hereinafter set forth.

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**
2 **(Violation of Plaintiff's Right to Enjoy Civil Rights)**
3 **(Violation of CALIFORNIA CIVIL CODE §52.1)**

4 48. Plaintiff incorporates by reference herein, repleads and realleges
5 paragraphs 1 through 47 of this complaint as though fully set forth herein.

6 49. Defendants' above-described conduct constituted interference, and
7 attempted interference, by threats, intimidation and coercion, with Plaintiff's
8 exercise and enjoyment of rights secured by the Constitution and laws of the United
9 States and the State of California, in violation of California Civil Code §52.1.

10 50. As a legal result of the wrongful conduct of the defendants, and each
11 of them, Plaintiff suffered damages as set forth above and hereinafter.

12 WHEREFORE, plaintiff prays judgment against the defendants, and each of
13 them, as hereinafter set forth.

14 **FIFTH CAUSE OF ACTION**
15 **(Assault And Battery)**

16 51. Plaintiff incorporates by reference herein, repleads and realleges
17 paragraphs 1 through 50 of the complaint as though fully set forth herein.

18 52. Defendants' above-described conduct constituted assault and battery.

19 WHEREFORE, plaintiff prays judgment against the defendants, and each of
20 them, as hereinafter set forth.

21 **SIXTH CAUSE OF ACTION**
22 **(Intentional Infliction of Emotional Distress)**

23 53. Plaintiff incorporates by reference herein, repleads and realleges
24 paragraphs 1 through 52 of the complaint as though fully set forth herein.

25 54. Defendants' above-described conduct constituted intentional infliction
26 of emotional distress.

27 WHEREFORE, plaintiff prays judgment against the defendants, and each of
28 them, as hereinafter set forth.

1 **SEVENTH CAUSE OF ACTION**

2 **(Monell)**

3 **(42 U.S.C. §1983)**

4 55. Plaintiff incorporates by reference herein, repleads and realleges
5 paragraphs 1 through 54 of the complaint as though fully set forth herein.

6 56. Plaintiff is informed and believes and thereon alleges that high ranking
7 officials of defendant City of Stockton, including high ranking Stockton Police
8 Department officers and agents, and each of them, approved, ratified, condoned,
9 encouraged, sought to cover-up, and/or tacitly authorized the continuing pattern
10 and practice of misconduct and/or civil rights violations by officers of the City of
11 Stockton.

12 57. Plaintiff is further informed and believes and thereon alleges that as a
13 result of the deliberate indifference of the defendants, and each of them as
14 referenced hereinabove, and the reckless and/or conscious disregard for the
15 misconduct by defendants Does 33 through 100, and/or each of them Plaintiff's
16 constitutional rights were violated.

17 58. Plaintiff is further informed and believes and thereon alleges that as a
18 result of the deliberate indifference, reckless and/or conscious disregard for the
19 misconduct by defendants and Does 1 through 100, and/or each of them, the
20 remaining defendants, and each of them, encouraged these officers to continue
21 their course of misconduct.

22 59. The aforementioned acts and/or omissions and/or deliberate
23 indifference by high ranking officials, including high ranking City of Stockton Police
24 Department supervisors, resulted in the deprivation of Plaintiff's constitutional
25 rights including, but not limited to, the following:

26 a. The right to be free from unreasonable searches and seizures, as
27 guaranteed by the Fourth and Fourteenth Amendments to the United States
28 Constitution;

b. The right to not be deprived of life and liberty without due process of law, as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution;

c. The right to be free from the use from excessive force by police officers, which is guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution;

d. The right to equal protection of the laws as guaranteed by the Fourteenth Amendments to the United States Constitution; and/or _____

e. The right to be free from interference within the zone of privacy, as protected by the Fourth and Ninth Amendments to the United States Constitution;

60. Said rights are substantive guarantees under the Fourth and/or Fourteenth Amendments to the United States Constitution.

WHEREFORE, plaintiff prays judgment against the defendants, and each of them, as hereinafter set forth.

EIGHTH CAUSE OF ACTON (General Negligence)

61. Plaintiff incorporates by reference herein, repleads and realleges paragraphs 1 through 60 of the complaint as though fully set forth herein.

62. Defendants' above-described and/or omissions were negligent and careless in violation both state and federal laws and otherwise breached duties of reasonable care.

63. As a legal result of the wrongful acts and/or omissions of the defendants, and each of them, Plaintiff suffered damages as set forth above and hereinafter.

WHEREFORE, plaintiff prays judgment against the defendants, and each of them, as hereinafter set forth.

///

1 **JURY DEMAND**

2 64. Plaintiff hereby demands a jury trial in this action.

3 **PRAYER**

4 WHEREFORE, plaintiff prays judgment against defendants, and each of
5 them—except as limited by the stipulation and order as alleged in paragraph 36 of
6 the complaint—as follows:

7 1. For all general, compensatory, non-economic damages in an amount
8 to be determined according to proof;

9 2. For all past and future medical, incidental, economic, consequential
10 and/or special damages incurred by Plaintiff in an amount to be determined
11 according to proof;

12 3. For all past and future lost earnings in an amount to be determined
13 according to proof;

14 4. For exemplary and punitive damages in an amount to be determined
15 according to proof at trial;

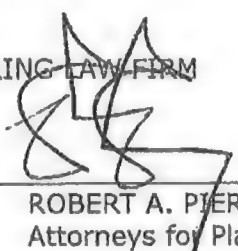
16 5. For reasonable attorneys' fees and costs of suit herein incurred;

17 6. For prejudgment and postjudgment interest in an amount to be
18 determined according to proof at trial;

19 7. For such other and further relief as the court may deem fair and
20 proper.

21 Dated: April 15, 2016

PIERING LAW FIRM

22
23 BY: 
24 ROBERT A. PIERING
Attorneys for Plaintiff

25 ///

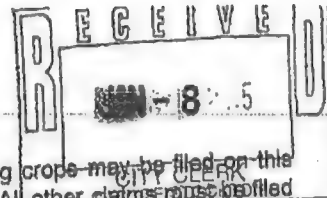
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EXHIBIT "A"

CLAIM FOR DAMAGES

CITY OF STOCKTON



Note: Claims for bodily injury or death, damage to personal property, or damage to growing crops may be filed on this form, not later than six months after the occurrence out of which the claims arose. All other claims must be filed not later than one year after the occurrence out of which the claims arose. (Refer to California Government Code sections 910.4 and 911.2)

DIRECTION: The original claim must be filed with the City of Stockton City Clerk's Office, 425 North El Dorado Street, Stockton, California 95202. Retain the yellow copy for your records.

NAME OF CLAIMANT: Koussaya Stephanie (Last) (First) (Middle) Date of Birth 9/8/1983

HOME ADDRESS/PHONE: 776 University Avenue, Sacramento, CA 95825 (Number/Street) (City/State/Zip Code) (916) 446-1944 (Phone Number)

BUSINESS ADDRESS/PHONE: _____ (Number/Street) (City/State/Zip Code) (Phone Number)

DIRECTION: Indicate to which address you wish notice sent

☒ HOME

☐ BUSINESS

WHEN DID INJURY OR DAMAGE OCCUR? July 16, 2014 Wednesday 2:10 p.m.
(Month/Day/Year) (Day of Week) (Time of Day)

WHERE DID INJURY OR DAMAGE OCCUR?
(Street address, intersecting streets, or other location)

See Exhibit "A" Attached hereto and incorporated by reference

HOW DID INJURY OR DAMAGE OCCUR?

(Describe accident or occurrence in complete detail) See Exhibit "A" Attached hereto and incorporated by reference

NAME OF CITY EMPLOYEE(S) INVOLVED? To be determined

WHAT ACTION OR INACTION OF CITY EMPLOYEE(S) CAUSED YOUR INJURY OR DAMAGES? See Exhibit "A" attached hereto and incorporated by reference.

WHAT INJURIES OR DAMAGES DID YOU SUFFER? See Exhibit "A" attached hereto and incorporated by reference.

TOTAL AMOUNT CLAIMED: ☒ Unlimited case—over \$25,000.00

☐ Limited case—\$25,000.00 or less

If under \$10,000.00, please specify amount \$ _____

DIRECTION: Sign and date this Claim For Damages below. If the signer is not the claimant, indicate the relationship of the signer to the claimant.

(Signature)

1/8/15
(Month/Day/Year)

(Social Security Number-Optional)

Attorney Robert Piering
(Relationship of signer, if not claimant)

DIRECTION: You may attach and include with this completed form any bills for medical treatment and expenses, and any estimates or bills for personal property damage. Questions may be referred to (209) 937-8807

•NOTE: PRESENTATION OF A FALSE CLAIM IS A FELONY (Refer to California Code Section 72)

Exhibit "A" to Government Claim of Stephanie Koussaya

On July 16, 2014, at or about 2:10 pm, three armed gunman entered the Bank of the West banking center located on the 7800 block of Thornton Road in Stockton, California. The gunman stated they were robbing the bank and after securing funds from the bank, demanded a car for their escape. A bank employee offered her keys to the robbers and then left the bank with the robbers to direct them to her car. Before reaching the car, the robbers were confronted by unknown officers of the Stockton Police Department who had guns drawn and pointed at the robbers. In response, the robbers re-entered the bank and took Claimant and a bank customer hostage to shield and support their escape from the officers.

The robbers, taking with them Claimant and two other hostages then speed away in the bank employee's vehicle. A high speed chase then predictably ensued and as many as 33 Stockton Police officers exchanged gunfire with the robbers while Claimant and another hostage were still in the car. At several points, Stockton Police Officers and police officers from other agencies engaged in the pursuit of the robbers and despite knowing that two innocent hostages were in the car, several City of Stockton police officers shot at the car the robbers and hostages occupied. Fearing that she would be killed by shots fired into the car by police officers, Claimant miraculously managed to open the door beside her and jump from the car when the car was traveling at no less than 50 miles per hour.

As a result of the conduct, indifference, containment and pursuit tactics of unknown police officers of the City of Stockton and their open, obvious and confrontational presence at the bank, Claimant was taken as a hostage and exposed to untold physical and emotional harm and loss, the same of which caused and continues to cause Claimant physical and emotional harm and loss.

Claimant is informed and believes that claims exist against the City of Stockton, City of Stockton Police Department, City of Stockton police officers D. Egan, D. Sandoval, J. Zavala, S. McPherson, A. Adams, H. Sensabaugh, N. Hance, E. Bergwerff, J. Sawn, T. Valone, P. Mayer, G. Guerrero, M. Serna, S. Ven, S. Konoske, P. Freer, J. Griffin, P. Smith, I. Rose, N. Urias, M. Sandberg, M. Rodriguez, and other officers whose names are currently unknown to Claimant, County of San Joaquin, County of San Joaquin's Sheriff's Department, City of Lodi Police Department, State of California, California Highway Patrol, and officers of each of the foregoing agencies whose names are currently unknown Claimant, for assault, battery, infliction of emotional distress, negligence along with violations

of Claimant's federal and state civil and constitutional rights arise out of the incident.

As is presently known, Claimant's injuries include trauma and damage to her head, neck, ears, hips, legs and back, the nature and extent of which currently are unknown, together with lost past earning and future earning and/or earning capacity.

Claimant is informed and believes that this claim exceeds the jurisdictional minimum of the Superior Court of the State of California.

EXHIBIT "B"

Fill in this information to identify the case

Debtor 1 CITY OF STOCKTON, CALIFORNIA

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the Eastern District of California

Case number 2012-32118

Official Form 410
Proof of Claim

12/15

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1 Identify the Claim

1. Who is the current creditor? Stephanie Koussaya
Name of the current creditor (the person or entity to be paid for this claim)
Other names the creditor used with the debtor _____

2. Has this claim been acquired from someone else?
☒ No
☐ Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent? <u>see attached</u> Name _____ Number _____ Street _____ City _____ State _____ ZIP Code _____ Contact phone _____ Contact email _____	Where should payments to the creditor be sent? (if different) Name _____ Number _____ Street _____ City _____ State _____ ZIP Code _____ Contact phone _____ Contact email _____
--	---

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. Does this claim amend one already filed?
☐ No
☒ Yes. Claim number on court claims registry (if known) _____

5. Do you know if anyone else has filed a proof of claim for this claim?
☒ No
☐ Yes. Who made the earlier filing? _____

Filed on 01/08/2015
MM / DD / YYYY

Part 2**Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor? ☒ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ _____ amount unliquidated. Does this amount include interest or other charges?
☒ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
 Limit disclosing information that is entitled to privacy, such as health care information.

Personal injury tort claim - see attached.

9. Is all or part of the claim secured? ☒ No
☐ Yes. The claim is secured by a lien on property.
 Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☐ Other. Describe. _____

Basis for perfection:

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____

Amount of the claim that is secured: \$ _____

Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

Annual interest rate (when case was filed) _____ %

- ☐ Fixed
☐ Variable

10. Is this claim based on a lease? ☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? ☒ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check all that apply:

- ☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- ☐ Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(e)(7).
- ☐ Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).
- ☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).
- ☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(6).
- ☐ Other: Specify subsection of 11 U.S.C. § 507(a) () that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/16 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3 Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$300,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- ☐ I am the creditor.
- ☒ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 12/2/2016

Signature

Print the name of the person who is completing and signing this claim:

Name Robert A. Plering
First name Middle name Last name

Title Attorney for Claimant

Company _____
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 775 University Avenue
Number Street

Sacramento CA 95825
City State ZIP Code

Contact phone (916) 446-1944 Email rob@pleringlawfirm.com

1 **ADDENDUM TO THE AMENDED CLAIM OF STEPHANIE KOUSSAYA**
2 **DEMAND FOR JURY TRIAL**

3 Stephanie Koussaya ("Claimant") hereby submits this amendment to her previously filed
4 claim (the "Amended Claim") in the above-captioned chapter 9 bankruptcy case of the City of
5 Stockton, California. The following is a summary only and does not fully describe all damages and
6 liabilities and is not intended to restrict, alter, waive or modify any right, remedy or other matter.
7 This proof of claim is based on the information currently available and is subject, from time to time,
8 to changes, amendments and/or modifications including without limitation, concerning the amounts,
9 liabilities, damages, obligations and/or duties owed to Claimant and to assert additional claims,
10 whether legal or equitable. In addition, this proof of claim is subject to changes, amendments and/or
11 modification including to set forth additional amounts, liabilities, damages, obligations or other
12 matters owed to Claimant including to specify the amount of any contingent, unmatured or
13 unliquidated claims as they become non-contingent, matured and/or liquidated.

14 **THE INITIAL CLAIM**

15 1. On January 8, 2015, Claimant timely filed the appropriate governmental claim with
16 the City of Stockton, in accordance with Section 910 and 915(b) of the California Government Code
17 (the "Claim"). Claimant, through her counsel, personally filed the Claim with the City of Stockton,
18 City Clerk's Office, 425 North El Dorado Street, Stockton, California 95202. A stamped filed true
19 and complete copy of that Claim is attached hereto as Exhibit A.

20 2. *The First Amended Plan for the Adjustment of Debtors of City of Stockton,*
21 *California, as Modified (August 8, 2014)* [Docket No. 1645] (the "Amended Plan") classified the
22 Claim as General Liability Claim, which was defined as "a tort or contract Claim filed against the
23 City pursuant to the Government Claims Act, California Government Code section 810 et seq."
24 Amended Plan, p. 13, ln. 9-10.

25 3. This Amended Claim amended the Claim in that it (i) supplements the Claim with
26 additional documentation related to the pending state court action against the City of Stockton
27 designated as *Koussaya v. City of Stockton*, Case No. 39-2015-00327938-CU-CR-STK (San Joaquin
28 Sup. Ct.) (the "State Court Action"), and (ii) adds Boutin Jones Inc., as associated bankruptcy

1 counsel and as a notice party for the Claim.

2 **BASIS OF CLAIM**

3 4. On July 16, 2014, at or about 2:10 pm, three armed gunman entered the Bank of the
4 West banking center located on the 7800 block to Thornton Road in Stockton, California. The
5 gunman stated they were robbing the bank and after securing funds from the bank, demanded a car
6 for their escape. A bank employee offered her keys to the robbers and then left the bank with the
7 robbers to direct them to her car. Before reaching her car, the robbers were confronted by unknown
8 officers of the Stockton Police Department who had guns drawn and pointed at the robbers. In
9 response, the robbers re-entered the bank and took Claimant and a bank customer hostage to shield
10 and support their escape from the officers.

11 5. The robbers, taking with them Claimant and two other hostages then speed away in
12 the bank employee's vehicle. A high speed chase then predictably ensued and as many as 33
13 Stockton Police officers exchanged gunfire with the robbers while Claimant and another hostage
14 were still in the car. At several points, Stockton Police Officers and police officers from other
15 agencies engaged in the pursuit of the robbers and despite knowing that two innocent hostages were
16 in the car, several City of Stockton police officers shot at the car the robbers and hostages occupied.
17 Fearing that she would be killed by shots fired into the car by police officers, Claimant miraculously
18 managed to open the door beside her and jump from the car when the car was traveling at no less
19 than 50 miles per hour.

20 6. As a result of the conduct, indifference, containment and pursuit tactics of unknown
21 police officers of the City of Stockton and their open, obvious and confrontational presence at the
22 bank, Claimant was taken as a hostage and exposed to untold physical and emotional harm and loss,
23 the same of which caused and continues to cause Claimant physical and emotional harm and loss.

24 7. As is presently known, Claimant's injuries include trauma and damage to her head,
25 neck, ears, hips, legs and back, the nature and extent of which currently are unknown, together with
26 lost past earning and future earning and/or earning capacity.

27 8. Claimant was taken hostage and exposed to untold physical and emotional harm and
28 loss due to the conduct, indifference, containment and pursuit tactics of the City of Stockton's police

1 department in connection with an armed bank robbery that began within the City of Stockton. As a
2 result of this incident, the Claimants hold claims against the City of Stockton for personal injury and
3 emotional distress based on causes of action including, but not limited to, violation of civil rights
4 under 42 U.S.C. § 1983 and California Civil Code § 52.1, assault and battery, and negligence.

5 9. Under California law, before a party may sue a governmental entity for money
6 damages, that party must first file a claim meeting the requirements of the California Government
7 Claims Act., California Government Code Section 810 *et seq.* The deadline for the Claimants to
8 assert a claim under the California Government Claims Act was January 16, 2015. On or about
9 January 8, 2015, Claimant timely filed such a claim. *See Exhibit A.*

10 10. The City of Stockton failed to act on the Claimants' governmental claim within 45
11 days from the date of filing thereby allowing Claimant to file her *Complaint for Violation of Civil*
12 *Rights; Assault & Battery and Damages* asserting causes of action for violation of civil rights under
13 42 U.S.C. § 1983 and California Civil Code § 52.1, assault and battery, and negligence in the
14 California Superior Court, County of San Joaquin, commencing the State Court Action.

15 11. On June 28, 2012, prior to the events that injured Claimant, the City of Stockton filed
16 its bankruptcy petition in the United States District Court, Eastern District of California,
17 commencing the above-referenced bankruptcy case under chapter 9 of title 11 of the United States
18 Code (the "Bankruptcy Code").

19 12. On or about August 8, 2014, the City of Stockton filed its *First Amended Plan for the*
20 *Adjustment of Debts of City of Stockton, California, as Modified (August 8, 2014)* [Docket No. 1645]
21 (the "Amended Plan").

22 13. The Amended Plan provided for the treatment of General Liability Claims in
23 "Class 14 – Claims of Certain Tort Claimants" as follows:

24 The SIR Claim Portion of each Allowed General Liability Claim will be paid on the
25 Effective Date from the Risk Management Internal Service Fund, and will receive the
26 same percentage payment on the dollar of Allowed Claim as will the holders of
Allowed Class 12 Claims. The Insured Portion of each Allowed General Liability
Claim is not Impaired, and shall be paid by the applicable excess risk-sharing pool.

27 Amended Plan, p. 43, ln. 11-15.

28 ///

1 14. On February 4, 2015, the bankruptcy court confirmed the City of Stockton's
2 Amended Plan and entered its *Order Confirming First Amended Plan for the Adjustment of Debts of*
3 *City of Stockton, California, as Modified (August 8, 2014)* [Docket No. 1875].

4 15. Additionally, counsel for Claimant and counsel in the City Attorney's office of the
5 City of Stockton engaged in correspondence concerning efforts by Claimant's counsel to obtain
6 public records concerning Claimant and her statements to the police.

7 **SUPPORTING DOCUMENTS**

8 16. The documents upon which this Amended Claim is based include: (1) the Claimants'
9 *Governmental Claim Against the City of Stockton (California Government Code Section 910)*
10 (attached hereto as **Exhibit A**); (2) the Claimants' *Complaint and Demand for Jury Trial* (attached
11 hereto as **Exhibit B**); (3) the City of Stockton's *First Amended Plan for the Adjustment of Debts of*
12 *City of Stockton, California, as Modified (August 8, 2014)* [Docket No. 1645].

13 17. Claimants reserve the right to supplement this Amended Claim with additional
14 supporting documentation as necessary and applicable.

15 **CLASSIFICATION OF CLAIM**

16 18. The Claimants' Amended Claim is a General Liability Claim pursuant to the City of
17 Stockton's Amended Plan of Reorganization. The amount of the Claimants' Amended Claim will be
18 determined in connection with the trial on the merits of the Amended Claim.

19 **NOTICES**

20 19. All notices and distributions in respect of this Amended Claim should be forwarded
21 to counsel for the Claimants via overnight mail:

22 Robert A. Piering, Esq.
23 Piering Law Firm
24 775 University Avenue
Sacramento, CA 95825
Facsimile: (916) 446-1944

25 With a copy of all notices to be sent to associated bankruptcy counsel:

26 Mark Gorton, Esq.
27 Boutin Jones Inc.
555 Capitol Mall, Suite 1500
28 Sacramento, CA 95814
Facsimile: (916) 441-7597

RESERVATION OF RIGHTS

20. The Claimants hereby reserve the right to amend and/or supplement this Amended Claim from time to time hereafter as it may deem necessary and proper.

21. Nothing herein nor in any other appearance, pleading, claim, suit, motion, complaint, or any other writing or conduct shall constitute a waiver by Claimant of any procedural and/or substantive rights, remedies and/or defenses including, without limitation: (a) the right to have any and all final orders in any and all matters entered only after de novo review by a United States District Court Judge; (b) the right to have any matter heard and tried before an Article III court; (c) the right to trial by jury in any proceeding as to any and all matters so triable therein, whether or not the same be designated legal or private rights, or in any case, controversy or proceeding related hereto, whether or not such jury trial right is pursuant to statute or the United States Constitution; (d) the right to have the reference of this matter withdrawn by the United States District Court in any matter or proceeding subject to mandatory or discretionary withdrawal; (e) other rights, claims, actions, remedies, defenses, setoffs, recoupments or other matters to which this claimant(s) is/are entitled under any agreements or at law or in equity or under the United States Constitution; or (f) the right to be served directly with pleadings commencing an adversary proceeding, contested matter and/or lawsuit. Claimant reserves all rights under 28 U.S.C. Sections 157(b)(2)(B), (b)(2)(O) and (b)(5) and 28 U.S.C. Sections 1411(a) relating to wrongful death and personal injury tort and wrongful death claims. Claimant does not consent to the bankruptcy court's jurisdiction or the jurisdiction of any other court. Claimant does not consent to the entry of final judgments, orders and/or decrees by the bankruptcy judge/bankruptcy court. At all times, Claimant demands a jury trial.

22. Nothing herein or in any other pleading or paper filed by Claimant is or is to be construed as any waiver of the right or ability of Claimant to demand or require alternative dispute resolution, mediation or similar process which any of them have or may have under the applicable law or otherwise. Nothing herein or in any other pleading or paper filed by Claimant shall limit or impair any right, remedy, claim or interest, whether legal or equitable, including under the applicable law or otherwise, including against any person or entity, including the Debtor.

1 23. Claimant reserves the right to attach or rely upon additional documents or evidence in
2 support of this Proof of Claim if, as, and when such additional documents or evidence become
3 available.

4 24. All of the above rights and/or remedies are hereby expressly reserved. Filing of this
5 Proof of Claim or participating in this bankruptcy case shall not be deemed to constitute a
6 concession or admission of jurisdiction in the case or cases or before this Court or any other court.
7 Nor does Claimant waive, and specifically preserves, any procedural and/or substantive defenses to
8 any claim that may be asserted against Claimant by the Debtor, by any assignee/delegate of the
9 Debtor, or by any official committee appointed in this case, or by any other party or group. The
10 filing of this Proof of Claim shall not constitute an election of remedies or choice of law or a waiver
11 of any such rights relating thereto. Nothing contained in this Proof of Claim shall limit any right of
12 Claimant to commence or continue any proceeding or take any action to the extent permitted by the
13 Bankruptcy Code, applicable non-bankruptcy law, or order of a court of competent jurisdiction.

14 25. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, as made
15 applicable to these proceedings pursuant to Rule 9015 of the Federal Rules of Bankruptcy
16 Procedure, Claimant hereby demands a jury trial. Claimant does not consent to any jury trial
17 by the Bankruptcy Court.
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EXHIBIT "C"

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Attorneys for Debtor
City of Stockton

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:
CITY OF STOCKTON, CALIFORNIA,
Debtor.

Case No. 12-32118

D.C. No. OHS-96

Chapter 9

**STIPULATION BETWEEN THE CITY
OF STOCKTON AND STEPHANIE
KOUSSAYA RE CLAIM NO. 306**

Date: April 12, 2016
Time: 9:30 a.m.
Dept: Courtroom 35
Judge: Hon. Christopher M. Klein

The City of Stockton, California (the "City"), and Stephanie Koussaya ("Koussaya" and together with the City, the "Parties") hereby enter into the following stipulation ("Stipulation") and jointly request that the Court approve the Stipulation:

RECITALS

A. The City filed its chapter 9 petition on June 28, 2012, and the Bankruptcy Court for the Eastern District of California ("Bankruptcy Court") entered its Order For Relief [Dkt. No. 843] on April 1, 2013.

STIPULATION BETWEEN THE CITY OF
STOCKTON AND STEPHANIE KOUSSAYA

1 B. On July 16, 2014, Koussaya was injured during a bank robbery and
2 hostage situation. Koussaya timely filed a government claim with the City on January 8, 2015
3 pursuant to the California Government Claims Act, California Government Code § 810 *et seq.*
4 ("Government Claim"), seeking damages against the City and others on account of the July 16,
5 2014 incident. Koussaya contends and the City disputes that the filing of the Government Claim
6 complied with the requirements of the City's First Amended Plan for the Adjustment of Debts of
7 City of Stockton, California, as Modified (August 8, 2014) [Dkt. No. 1645] ("Plan") relating to
8 the filing of proofs of claim.

9 C. Pursuant to California Government Code § 912.4, the City had 45 days
10 (through March 21, 2015), to expressly reject or deny the Government Claim in writing. Absent
11 express written rejection, the Government Claim is deemed rejected by operation of law. The
12 City did not take any express action to reject or deny the Government Claim, and therefore the
13 Government Claim was rejected by operation of law. The statute of limitations under state law
14 for claims arising out of the July 16, 2014 incident ("Claims") within which Koussaya may
15 timely commence an action against the City and others as delineated in the Government Claim
16 expires on July 16, 2016 – two years from the date the Claims arose.

17 D. On February 4, 2015, the Bankruptcy Court confirmed the Plan. The Plan
18 went effective on February 25, 2015 ("Effective Date"). Pursuant to Article XI.B of the Plan
19 and § 524(a)(1) and (a)(2) of the Bankruptcy Code, the occurrence of the Effective Date gave
20 rise to an injunction against the commencement or continuation of legal actions seeking to
21 recover preconfirmation debts as personal liabilities of the City or to recover against the property
22 of the City on account of such debts ("Discharge Injunction").

23 E. Article II.D of the Plan provides:

24 All proofs of claim for Other Postpetition Claims arising on or after August
25 16, 2013, and requests for payment or any other means of preserving and
26 obtaining payment of Administrative Claims that have not been paid,
27 released, or otherwise settled, and all requests for approval of Professional
28 Claims, must be filed with the Bankruptcy Court and served upon the City
no later than 30 days after the date on which the Notice of Effective Date is
served.

1 Plan, Article II.D at p. 32, ln. 14-19 (emphasis in original). The City's Notice of Effective Date
2 contained the same language.

3 F. The City's Notice of Effective Date was sent to Koussaya's counsel on
4 March 9, 2015. The City contends and Koussaya disputes that the applicable bar date for
5 Koussaya to file a proof of claim was therefore April 8, 2015.

6 G. Koussaya initiated a lawsuit in the Superior Court for the County of San
7 Joaquin ("Superior Court"), case no. 39-2015-00327938-CU-CR-STK (the "Lawsuit"), by the
8 filing of a complaint on July 31, 2015. The complaint contained a prayer for damages against
9 the City, among other prayers for relief. The City filed a demurrer to the complaint on
10 December 3, 2015, arguing in part that Koussaya's claims against the City were barred by the
11 Discharge Injunction resulting from confirmation of the Plan].

12 H. On December 3, 2015, Koussaya filed with the Bankruptcy Court her
13 Amended Proof of Claim [Claim No. 306] purporting to amend the Government Claim. The
14 Government Claim, as purportedly amended, shall be referred to herein as the "Koussaya
15 Claim."

16 I. Koussaya then filed a First Amended Complaint And Demand For Jury
17 Trial ("First Amended Complaint") in the Superior Court on December 28, 2015. The First
18 Amended Complaint also contains a prayer for damages against the City, among other prayers
19 for relief.

20 J. Koussaya contends and the City disputes that the Koussaya Claim is not
21 time barred by either Article II.D of the Plan or the subsequent Notice of Effective Date proof of
22 claim filing requirements.

23 STIPULATION

24 Based on the forgoing Recitals and on the facts particular to Koussaya (and to no other
25 person or such other persons' claims against the City), the Parties agree as follows:

26 1. Pursuant to Article XI.A of the Plan and § 944 of the Bankruptcy Code,
27 confirmation of the Plan discharged all non-excepted, pre-confirmation debts of the City in
28 exchange for the rights afforded in the Plan and the treatment of all holders of Claims (as the

1 term "Claims" is defined in the Plan). The Koussaya Claim was not excepted from such
2 discharge.

3 2. The Government Claim shall be deemed to be a timely filed proof of
4 claim pursuant to the Ninth Circuit's informal proof of claim doctrine under *In re Sambo's*
5 *Restaurants, Inc.*, 754 F.2d 811, 812 (9th Cir. 1983), and its progeny. The Amended Proof of
6 Claim shall be deemed to be a properly and timely filed amendment to the Government Claim.

7 3. The Lawsuit is void pursuant to Bankruptcy Code § 524(a), and the
8 Koussaya shall dismiss the Lawsuit without prejudice within 14 days from the entry of a final,
9 non-appealable order approving this Stipulation. Each of the Parties agrees not to appeal the
10 order approving this Stipulation.

11 4. The statute of limitations under state law for Koussaya to commence an
12 action against the City among others on account of the Claims expires on July 16, 2016.

13 5. Conditioned upon the dismissal without prejudice of the Lawsuit, a
14 dismissal to which the City will not object, Koussaya shall be granted partial relief from the
15 Discharge Injunction in order to commence a new action in the Superior Court to litigate all
16 causes of action against the City, among other parties, on the underlying Claims (the "New
17 Action"). The Parties agree that the legal and factual merits of the Claims shall be determined
18 by the Superior Court, and that the Superior Court has jurisdiction to determine the validity and
19 amount of the Claims.

20 6. The complaint in the New Action shall state that: (1) any judgment,
21 settlement, or other final determination obtained by Koussaya against the City shall be treated in
22 accordance with the terms of the Plan for claimants holding claims classified in Class 14 –
23 Claims of Certain Tort Claimants; and (2) Koussaya shall not execute on any judgment or
24 settlement or seek recovery as against the City or any property of the City except as provided for
25 in the Plan.

26 7. Upon entry of any judgment, settlement or other final determination in the
27 New Action of the validity and the amount of the causes of action underlying the Koussaya
28 Claim, the City will be legally obligated to pay as damages such judgment, settlement, or other

1 final determination subject to the provisions of the Plan, including but not limited to, the
2 application of the discount as provided for in the treatment of Class 14 – Claims of Certain Tort
3 Claimants in which Koussaya Claim was placed. Notwithstanding any such judgment,
4 settlement, or other final determination, Koussaya shall waive only its right to collect the SIR
5 Claim Portion (as “SIR Claim Portion” is defined in the Plan) of the Koussaya Claim which the
6 City would be required to pay to Koussaya under the Plan.

7 8. As set forth in the Plan, “[t]he Insured Portion of each Allowed General
8 Liability Claim is not Impaired, and shall be paid by the applicable excess risk-sharing pool.”

9 This Stipulation is not intended in any way to impair, restrict, diminish or enlarge Koussaya’s
10 ability to recover the Insured Portion (as “Insured Portion” is defined in the Plan) of any
11 eventual judgment, settlement, or award against the City from the applicable excess risk sharing
12 pool. For the avoidance of any doubt, the “property of the City” referenced in paragraph 6 does
13 not include the Insured Portion.

14 9. Except as expressly provided in this Stipulation, all rights of the City to
15 object to or defend against the claims in the New Action on any ground are expressly preserved.
16 However, so long as the complaint and other allegations in the New Action are consistent with
17 the statements in Paragraph 6 of this Stipulation, the City shall not assert in the New Action that
18 (1) the Discharge Injunction prohibits Koussaya from pursuing the New Action in the Superior
19 Court, or (2) the New Action is barred by the applicable statute of limitations as long as the New
20 Action is filed by July 16, 2016.

21 10. The Parties consent to the entry of an order approving this Stipulation by
22 the Bankruptcy Court.

23 11. The Parties each shall pay their respective fees and costs arising out of this
24 Stipulation and any related pleadings.

25 12. This Stipulation may be executed in facsimile or electronic counterparts
26 and shall be deemed complete and effective as if it were executed as one original document.

1 Dated: March ²⁵, 2016

BOUTIN JONES, INC.

2
3
4 By: 

5 Mark Gorton
6 Attorneys for Stephanie Koussaya

7 Dated: March ²⁸, 2016

ORRICK, HERRINGTON & SUTCLIFFE LLP

8
9
10 By: 

11 Marc A. Levinson
12 Attorneys for City of Stockton, Debtor
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1 Michael J. Dyer SBN 109297
2 Dustin J. Dyer SBN 274308
3 DYER LAW FIRM
4 5250 Claremont Ave. Ste. 119
5 Stockton, CA 95207
6 PHONE (209) 472-3668
7 FAX (209) 472-3675

8 Attorneys for Plaintiff
9 KELLY HUBER

FILED
16 MAY -9 PM 1:37
ROSA JUNQUEIRO, CLERK
BY JOAQUIN GUERRERO
DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

KELLY HUBER,

Plaintiff,

vs.

CITY OF STOCKTON; STOCKTON
POLICE DEPARTMENT; and DOES 1 to
100, inclusive,

Defendants.

CASE N STK-CV-UPJ -2016- 9450
COMPLAINT FOR VIOLATION OF CIVIL
RIGHTS; ASSAULT & BATTERY;
INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS; NEGLIGENCE
AND DAMAGES

JURY TRIAL DEMANDED

I.

INTRODUCTION

This case arises out of the civil rights violation of plaintiff KELLY HUBER at the hands of the defendants during the afternoon of July 16, 2014.

II.

PARTIES

1. Plaintiff KELLY HUBER is, and at all times herein mentioned was, a resident of the county of San Joaquin.

2. Defendant City of Stockton is a governmental entity, duly organized and existing under the laws of the State of California.

3. Defendant Stockton Police Department is, and at all times herein mentioned was, an agent of defendant City of Stockton.

4. Doe Defendants 1-50 are, and at all relevant times herein were, employed as law enforcement officers by Defendant City of Stockton, and were acting within the course and scope of their employment. These defendants are being sued in their individual capacity. Based upon information and belief, each of these officers fired on the vehicle.

5. Plaintiff is ignorant of the true names and capacities of defendants sued herein as Does 1 through 100, inclusive, and therefore sues these defendants by such fictitious names and capacities. Plaintiff will amend this complaint to allege their true names and capacities when the same is ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's injuries as herein alleged were legally caused by said acts and/or omissions.

6. Plaintiff has complied with the administrative tort claims requirement under California law.

XIII.

STATEMENT OF FACTS

7. On or about July 16, 2014, Plaintiff was employed as the manager the Bank of the West located at the corner of 7810 Thornton Road in Stockton, CA in the City of Stockton. The bank was known by the defendants to have been robbed in the past and was situated in a high crime area in a city where crime rates were already far above national averages. The bank was commonly referred to in both banking and law enforcement communities as the "Rob and Go".

8. On January 31, 2014, the bank was robbed by Gilbert Renteria Jr. and Alex Gregory Martinez. The two men entered the bank on foot with guns and robbed the bank. As part of their escape plan, the men demanded the keys to a car from a bank employee. They then asked where the car was parked and exited the bank, turning; however, in the wrong direction from where the car was parked. After looking for the car for a short period of time, Renteria and Martinez were able to locate the vehicle and fled making their successful escape without further

1 incident. During this robbery, neither Renteria nor Martinez threatened to take hostages and
2 neither of them were apprehended by law enforcement, even though the defendants had
3 sufficient information and evidence to identify and arrest one or both robbers prior to July 16,
4 2014.

5 9. On July 16, 2014, Gilbert Renteria, Jr., Alex Gregory Martinez and
6 Jaime Ramos ("the robbers") returned to rob the bank once again. As in the previous robbery,
7 the robbers approached the bank on foot, after being dropped off by an accomplice. When the
8 robbers entered the bank, a bank employee activated a silent alarm notifying the City of Stockton
9 police department of the robbery in progress. The robbers were unaware of alarm notification
10 and after they entered the bank they followed the same routine as they had in the successful
11 January 2014 robbery. They gathered everyone into one area and then directed Plaintiff to take
12 them to the bank vault. During the entire time of the robbery, the robbers assured and reassured
13 Plaintiff and others in the bank that no one would be hurt as long as they followed directions.

14 10. Once the robbers secured the money from the bank, they demanded
15 keys to a car from one of the people inside of the bank just as they had done in the January 31,
16 2014 robbery. Plaintiff, recognizing the robbers and their method of operation from the prior
17 robbery in January, offered the keys to her car. To avoid any confusion with respect to the
18 location of the car, the robbers requested Plaintiff exit the bank with them to identify the exact
19 location of her vehicle. Plaintiff then exited the bank with the robbers to show the robbers the
20 location of her vehicle.

21 11. During the robbery, a Stockton police car arrived at the scene and pulled up
22 alongside the Bank parking lot with its lights on announcing their presence. Shortly thereafter,
23 another police car arrived and parked on the side of the Bank parking lot. A third police car
24 parked in the parking lot, fully visible to those exiting the bank. As the robbers left the bank
25 with only Plaintiff, they were met by defendant Stockton police officers with guns drawn who
26 yelled threatening remarks and forced all three robbers back into the bank. In response to the
27 verbal and physical threats of the defendants, the robbers grabbed Plaintiff and used her as a
28 human shield as they retreated back into the bank where other bank customers and employees
safely remained until the robbers were forced back into the bank. Once they reentered the bank,

1 the robbers grabbed to additional hostages, Misty Holt-Singh and Stephanie Koussaya, and then
2 exited the bank with Stephanie Koussaya, Misty Holt-Singh and Plaintiff at gunpoint.

3 12. The three gunmen left the bank with the 3 hostages and entered Plaintiff's
4 Explorer. Plaintiff was ordered to drive, with one suspect placed in the passenger seat, another
5 between Ms. Holt-Singh and Ms. Koussaya in the back seat, and a third suspect in the very back
6 of the vehicle.

7 13. The police began pursuit through residential streets, firing their weapons
8 numerous times at the vehicle containing the hostages. The pursuit ultimately lasted
9 approximately one hour and went onto city and residential streets in both Lodi and Stockton.

10 14. At 14:18:34, just two minutes after leaving the bank, Plaintiff shot in the legs by
11 robber Jaimie Ramos. The bullet wound incapacitated Plaintiff and she was no longer able to
12 drive the vehicle. The robbers then opened the driver's side door and forced Plaintiff out of the
13 car. Suspect Renteria then assumed control of the vehicle and accelerated north on Thornton
14 Road with multiple law enforcement vehicles in pursuit.

15 15. During the pursuit, Ms. Koussaya decided her only chance at survival was to
16 jump from the moving car which she luckily did at 15:15:54, just two (2) minutes before the
17 police defendants disabled the suspect car and 32 officers shot as many as 600 indiscriminate
18 bullets into the car, killing two of the robbers and the remaining innocent victim Misty Holt-
19 Singh.

20 16. The hostage situation would not have arisen if the defendants, and each of them,
21 had followed their own armed robbery protocols and general orders by staying out of sight until
22 the robbers separated from innocent victims and/or hostages. This failure to follow established
23 general orders and protocol caused the robbers to take hostages and allowed the robbers to use
24 hostages to become human shields in an effort to escape. Had the police followed general orders
25 and proper protocol and remained inconspicuous until the robbers were away from the innocent
26 victims, none of the victims would have been taken hostage and made to suffer the physical,
27 emotional and permanent harms sustained as alleged more particularly below. In fact, the
28 robbers would have driven away without any hostages as they had in the first robbery. Instead,
hostages were taken, one hostage was killed by the police, another victim was shot in her right

1 leg and plaintiff was compelled to jump out of a moving car because of the police pursuit and
2 bullets being shot into the car by the defendants. By pursuing, shooting at and ultimately
3 stopping the vehicle, the defendants seized all persons, including plaintiff, in the vehicle.

4 17. Plaintiff is informed and believes and thereon alleges that her injuries were a
5 direct and foreseeable harm resulting from defendants' failure to exercise the duty of care owed
6 to plaintiff, by both their intentional use of deadly and excessive force and in the use of deadly
7 weapons in attempting to respond to the bank robbery call. The use of unreasonable deadly force
8 by Stockton Police officers is not uncommon. Within the last six years alone Stockton Police
9 officers shot 27 individuals, killing 17.

10 18. The above-described acts, omissions, intentional and/or negligent conduct by
11 defendants was and is the factual and legal cause of plaintiff's damages as hereinafter set forth.

12 19. Plaintiff is informed and believes and thereon alleges that defendant City of
13 Stockton by and through its supervisory employees and agents, has and had a mandatory duty of
14 care to properly and adequately hire, train, retrain, supervise, and discipline its police
15 officers/deputies so as to avoid unreasonable risk of harm. With deliberate indifference, the
16 defendants, and each of them, failed to take necessary, proper, and/or adequate measures to
17 prevent the violation of plaintiff's rights and violated general orders and standard bank robbery
18 procedures in their response to the robbery and pursuit of the robbers.

19 20. Plaintiff is informed and believes and thereon alleges that defendants City of
20 Stockton, Stockton Police Department and DOES 1 through 100, and each of them, breached
21 their duty of care to the public and plaintiff in that they failed to adequately train, supervise, and
22 discipline their officers in the proper response to robberies, making of detentions, pursuit, arrests
23 and in the use of deadly force.

24 21. The lack of supervisorial training demonstrates the existence of a formal or an
25 informal custom, policy or practice of promoting, tolerating, and/or ratifying with deliberate
26 indifference the continued use of deadly and excessive force against suspects, detainees and in
27 particular, plaintiff herein, by the defendants, and each of them.

28 22. The Defendants, and each of them, acted under color of law by subjecting

1 plaintiff without lawful justification to excessive force thereby depriving plaintiff of certain
2 constitutionally protected rights, including, but not limited to:

3 a. The right to be free from unreasonable searches and seizures, as guaranteed by the
4 Fourth and Fourteenth Amendments to the United States Constitution;

5 b. The right to not be deprived of life and liberty without due process of law, as
6 guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution;

7 c. The right to be free from the use from excessive force by police officers, which is
8 guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution;

9 d. The right to be free from interference within the zone of privacy, as protected by
10 the Fourth and Ninth Amendments to the United States Constitution.

11 e. The right to be free from deprivation of life and/or liberty, protected by the
12 Fourteenth Amendment to the United States Constitution.

13 A.

14 **The Stockton Police Department failed to follow standard,**
15 **well-established robbery, response, pursuit and apprehension**
16 **protocols.**

17 23. The Stockton Police department failed to follow standard well-recognized
18 protocol when responding to the in-progress armed bank robbery. The first arriving officers
19 should arrive in stealth to avoid detection by the perpetrators. Officers want to preserve the
20 element of surprise to avoid a hostage situation in which the people inside the bank may be
21 harmed. In other words, the officers do not want the criminals to know of their presence
22 because doing so would endanger the innocent victims inside the establishment and create a
23 hostage situation that may not otherwise exist.

24 24. This fundamental protocol is set forth in the 1992 Model Policy for a Bank Alarm
25 Response from the IACP National Law Enforcement Policy Center (Dept of Justice) as follows:

26 B. **Responding Officer Procedures**

- 27 1. **Responding officers shall use appropriate vehicular warning devices when**
28 **approaching the scene, but the siren will not be used within the hearing**
range of the reported robbery.

3. The first unit on the scene shall serve as the primary unit until relieved by a supervisor, and shall take a position in front of the facility that provides good observation without being easily visible to those inside. The primary unit shall report on observable conditions at the location to the dispatcher but should not initially approach the building.

25. The Stockton Police Department's General Order for Robbery Alarms (including Hold-Up Alarms and Bank Alarms) sets forth this same requirement that the initial officers responding to the scene should avoid detection because a "hostage situation could be initiated by police response being recognized by the robbers."

STOCKTON POLICE DEPARTMENT

GENERAL ORDER

ROBBERY ALARMS
SUBJECT

DATE: March 1, 2005

NO: N-1

FROM: CHIEF THOMAS T. MORRIS

TO: ALL PERSONNEL

INDEX: Alarm Calls
Robbery Alarms
Hold-up Alarms
Bank Alarms

B. Bank and Business Robbery Alarms

1. Immediately upon receipt of a holdup alarm from a bank or business by the Telecommunications Center, or telephone call of a robbery in progress, field units normally will be informed on all six radio channels and the Telecommunications Center will dispatch a minimum of three units to the scene.
2. Assigned responding units shall give their location upon receiving the call and will answer the radio as dispatched.
 - a. Units will respond "Code 3" and may discontinue the use of red lights and siren when close to arrival and respond the remainder of the distance in accordance with traffic laws. The exact time to discontinue "Code 3" response is to be decided by each individual member assigned to respond, taking into consideration the fact a hostage situation could be initiated by police response being recognized by the robbers.

26. Instead, as confirmed by video footage, the City of Stockton's police arrived at the Bank of the West with lights on and took positions that were in full view of the bank robbers. Instead of allowing the gunmen to continue leaving the Bank as was originally planned, the police's flawed response forced the gunmen back into the bank, where they then took hostages, including Plaintiff, Ms. Holt-Singh and Ms. Koussaya, and fled in Plaintiff's vehicle.



(Photograph showing an officer in full view of the Bank windows.)

27. The department's negligent, reckless, intentional actions continued for well over an hour. Instead of trying to preserve the safety of the known innocent hostages, the Stockton Police Department engaged in a high-speed chase through residential streets and public highways. During this chase, which lasted over an hour, officers repeatedly discharged their weapons at the suspect vehicle even though it was known there were innocent hostages inside.

B.

The Stockton police failed to train and supervise its employees to follow up on known leads of one of the perpetrators following the January 31, 2014 robbery.

28. In the 30 months before the July 16, 2014 robbery, the Bank of the West branch on Thornton Rd. in Stockton had been victimized by numerous armed robberies. One of these robberies took place on January 31, 2014. That day, Stockton police officers arrived at the scene shortly after the robbery and began their investigation. After taking the statement of bank employees, Officer Sandoval on January 31, 2014, located a suspicious vehicle reported southwest of the bank belonging to Gilbert Renteria, Jr., who was one of the gunmen from the January 31 robbery. The vehicle was impounded, and subsequently searched pursuant to a warrant on February 4, 2014. Officers located Gilbert Renteria's California Identification Card within the vehicle along with two large freezer bags of live ammunition—one bag contained over 140 rounds of rifle ammunition.

29. Gilbert Renteria, Jr. matched the description of one of the suspects of the January 31, 2014 robbery. Despite having located, identified, and impounded the suspicious vehicle on January 31, 2014—registered to Gilbert Renteria, Jr., containing his identification and a store of live ammunition—the Stockton Police Department failed to supervise its employees in following up on this important lead. Renteria, who was a known criminal on parole and could have been arrested for possessing firearms, continued to live in Stockton, and was never questioned about his possible role in the robbery. The Stockton Police Department failed to manage, direct, and ensure its officers and detectives followed protocol in investigating a possible suspect in the January 2014 robbery.

30. Had there been any reasonable supervision of its employees by Stockton police, Renteria would have been apprehended long before having the opportunity to repeat the same crime on July 16, 2014. As a result, Renteria was never questioned or apprehended following the January 31, 2014 robbery. Renteria and Alex Martinez clearly felt that they could repeat virtually the exact same crime at the same location on July 16, 2014 without fear of being caught.

31. In addition, defendant City of Stockton and Stockton Police Department, department wide, failed to conduct reasonable training, supervision, and control of it officers in the response to possible hostage situations, failed to conduct reasonable training, supervision, and control of it officers in the pursuit and apprehension of armed suspects with hostages.

C.

The City of Stockton and Huber have agreed that Koussaya is granted partial relief from the bankruptcy discharge injunction in order to commence and prosecute this action

32. On June 28, 2012, prior to the events that caused severe and permanent injury to Plaintiff and Koussaya, and took the life of Misty Holt-Singh, the City of Stockton filed its bankruptcy petition in the United States District Court, Eastern District of California, commencing a bankruptcy case (*In re City of Stockton, California*, Case No. 12-32118 (Bank. E.D. Cal.) and referenced by its pleadings as “Docket” throughout this section) under chapter 9 of title 11 of the United States Code (the “Bankruptcy Code”).

1 33. The bankruptcy court entered its order for relief under 11 U.S.C. § 921(d) on
2 April 1, 2013, finding that the petition satisfies the requirements under the Bankruptcy Code and
3 that the City of Stockton was eligible for relief under chapter 9. *See* Docket No. 843. Thereafter,
4 the City of Stockton filed its motion for the entry of an order to set August 16, 2013 as the
5 deadline for filing claims against the City that arose prepetition and prior to the August 16, 2013
6 deadline. *See* Docket No. 919 (the “Bar Date Motion”). The bankruptcy court entered its order
7 granting the Bar Date Motion on June 13, 2013. *See* Docket No. 960.

8 34. The City has long been aware of Plaintiff, Koussaya and the Singhs’ intent to
9 hold the City liable for the injuries and death claims arising from this matter. The harm to
10 Plaintiff, Koussaya and death of Misty Holt Singh at the hands of Stockton Police officers was
11 national news, with the City responding to numerous requests for media comments and even
12 providing its own press conferences about the actions of its officers.

13 35. Plaintiff complied with the requirements of the Amended plan
14 —which defined “General Liability Claim” as “a tort or contract Claim filed against the City
15 pursuant to the Government Claims Act, California Government Code section 810 *et seq.*”—by
16 timely filing a claim pursuant to the Government Claims Act on January 14, 2015. (See Exhibit
17 “A”). At that time, the City was formally placed on notice that plaintiff intended to hold them
18 liable for injuries she sustained in the incident. Over the next several months, plaintiff’s counsel
19 corresponded with Stockton City Attorneys requesting documents relating to the incident and the
20 claims being advanced by plaintiff herein.

21 36. Plaintiff filed an Amended Claim with the Bankruptcy Court on
22 December 14, 2015. (A copy of the Amended Claim—with its own internal exhibits omitted—is
23 attached to this First Amended Complaint as Exhibit “B”).

24 37. After litigating the matter in the Bankruptcy Court, the City of
25 Stockton and Plaintiff reached a stipulation to permit this matter to proceed on March 28, 2016.
26 (See Exhibit “C”) That stipulation was approved and entered as an order by the Bankruptcy
27 Court on March 29, 2016, and provides as follows:

- 28 a. Pursuant to Article XI.A of the Plan and § 944 of the Bankruptcy Code,
confirmation of the Plan discharged all non-excepted, pre-confirmation debts of

1 the City in exchange for the rights afforded in the Plan and the treatment of all
2 holders of Claims (as the term "Claims" is defined in the Plan). The Huber Claim
3 was not excepted from such discharge. (Exhibit "C", Stipulation ¶ 1.)

4 b. Huber's Government Claim shall be deemed to be a timely filed proof of claim
5 pursuant to the Ninth Circuit's informal proof of claim doctrine under *In re*
6 *Sambo's Restaurants, Inc.*, 754 F.2d 811, 812 (9th Cir. 1983), and its progeny.
7 The Amended Proof of Claim shall be deemed to be a properly and timely filed
8 amendment to the Government Claim. (Exhibit "C", Stipulation ¶ 2.)

9 c. The statute of limitations under state law for Huber to commence an action
10 against the City among others on account of the Claims expires on July 16, 2016.
11 (Exhibit "C", Stipulation ¶ 4.)

12 d. Huber is granted partial relief from the Discharge Injunction in order to
13 commence a new action—this action—in the Superior Court to litigate all causes
14 of action against the City, among other parties, on the underlying Claims (the
15 "New Action"). Huber and the City of Stockton agreed that the legal and factual
16 merits of the Claims shall be determined by the Superior Court, and that the
17 Superior Court has jurisdiction to determine the validity and amount of the
18 Claims. (Exhibit "C", Stipulation ¶ 5.)

19 e. The complaint in the New Action shall state, as it does here, that: (1) any
20 judgment, settlement, or other final determination obtained by Huer against the
21 City shall be treated in accordance with the terms of the Plan for claimants
22 holding claims classified in Class 14 – Claims of Certain Tort Claimants; and (2)
23 Huber shall not execute on any judgment or settlement or seek recovery as against
24 the City or any property of the City except as provided for in the Plan. (Exhibit
25 "C", Stipulation ¶ 6.)

26 f. Upon entry of any judgment, settlement or other final determination in the New
27 Action of the validity and the amount of the causes of action underlying the Huber
28 Claim, the City will be legally obligated to pay as damages such judgment,
settlement, or other final determination subject to the provisions of the Plan,

1 including but not limited to, the application of the discount as provided for in the
2 treatment of Class 14 – Claims of Certain Tort Claimants in which the Huber
3 Claim was placed. Notwithstanding any such judgment, settlement, or other final
4 determination, Huber shall waive only her right to collect the SIR Claim Portion
5 (as “SIR Claim Portion” is defined in the Plan) of the Huber Claim which the City
6 would be required to pay to Huber under the Plan. (Exhibit “C”, Stipulation ¶ 7.)

7 g. As set forth in the Plan, “[t]he Insured Portion of each Allowed General Liability
8 Claim is not Impaired, and shall be paid by the applicable excess risk-sharing
9 pool.” The stipulation between the City of the Stockton and Huber was not
10 intended in any way to impair, restrict, diminish or enlarge Huber’s ability to
11 recover the Insured Portion (as “Insured Portion” is defined in the Plan) of any
12 eventual judgment, settlement, or award against the City from the applicable
13 excess risk sharing pool. For the avoidance of any doubt, the “property of the
14 City” referenced in paragraph (e) above does not include the Insured Portion.
15 (Exhibit “C”, Stipulation ¶ 8.)

16 h. Except as expressly provided in Exhibit “C” all rights of the City to object to or
17 defend against the claims in the New Action on any ground are expressly
18 preserved. However, so long as the complaint and other allegations in the New
19 Action are consistent with the statements in Paragraph 6 of this Stipulation, the
20 City shall not assert in the New Action that (1) the Discharge Injunction prohibits
21 Huber from pursuing the New Action in the Superior Court, or (2) the New
22 Action is barred by the applicable statute of limitations as long as the New Action
23 is filed by July 16, 2016. (Exhibit “C”, Stipulation ¶ 9.)

24 IV.

25 DAMAGES

26 38. As a legal result of Defendants’ violation of Plaintiff’s civil rights under 42
27 U.S.C. §1983; the Fourteenth Amendment, Civil Code sections 52.1, 51.7, et seq.; the assault,
28 battery, intentional infliction of emotional distress and negligence, Plaintiff was injured in her
health, strength, and activity, sustaining injury to her body and shock and injury to her nervous

1 system and person, all of which injuries have caused and continue to cause Plaintiff mental,
2 physical, and nervous pain and suffering.

3 39. As a further legal result of Defendants' violation of Plaintiff's civil rights under
4 42 U.S.C. §1983; the Fourteenth Amendment, Civil Code sections 52.1, 51.7, et seq.; the assault,
5 battery, intentional infliction of emotional distress and negligence, Plaintiff was required to and
6 did and will continue to be required to employ physicians and other medical experts for medical
7 examination, treatment and cure of her injuries, and did incur and will continue to incur medical
8 and incidental expenses in an amount to be determined according to proof at trial

9 40. As a further legal result of Defendants' violation of Plaintiff's civil rights under
10 42 U.S.C. §1983; the Fourteenth Amendment, Civil Code sections 52.1, 51.7, et seq.; the assault,
11 battery, intentional infliction of emotional distress and negligence, Plaintiff was subjected to lost
12 earnings, loss of earning capacity, time and energy all to her further damage in an amount to be
13 determined according to proof at trial.

14 41. As a further legal result of Defendants' violation of Plaintiff's civil rights under
15 42 U.S.C. §1983; the Fourteenth Amendment, Civil Code sections 52.1, 51.7, et seq.; the assault,
16 battery, intentional infliction of emotional distress and negligence, Plaintiff was subjected to
17 property damage, loss of use, consequential damages, and other economic damages all to her
18 further damage in an amount to be determined according to proof at trial.

19 42. Plaintiffs found it necessary to engage the services of private counsel to vindicate
20 plaintiff's rights under the law. Plaintiff is therefore entitled to an award of attorneys' fees and/or
21 costs pursuant to statute(s) in the event that he is a prevailing party in this action under 42 U.S.C.
22 §§§§1983, 1985-86 and 1988 and other statutes and legal authorities.

23 FIRST CAUSE OF ACTION

24 Violation of Fourth Amendment of the United States Constitution 25 (42 U.S.C. §1983)

26 43. Plaintiff incorporates by reference herein, re-pleads and re-alleges paragraphs 1
27 through 42 of this complaint as though fully set forth herein.

28 44. Defendants' above-described conduct violated Plaintiff's rights as provided for

1 under the Fourth Amendment to the United States Constitution to be free from unreasonable
2 seizures.

3 WHEREFORE, plaintiff prays judgment against the defendants, and each of them, as
4 hereinafter set forth.

5 **SECOND CAUSE OF ACTION**

6 **Violation of Fourth Amendment of the United States Constitution**
7 **(42 U.S.C. §1983)**

8 45. Plaintiff incorporates by reference herein, re-pleads and re-alleges paragraphs 1
9 through 44 of the complaint as though fully set forth herein.

10 46. Defendants' above-described conduct violated Plaintiff's right as provided for
11 under the Fourth Amendment to the United States Constitution to be free from excessive force
12 and/or the arbitrary and/or unreasonable use of deadly force against her.

13 WHEREFORE, plaintiff prays judgment against the defendants, and each of them, as
14 hereinafter set forth.

15 **THIRD CAUSE OF ACTION**

16 **Violation of Fourteenth Amendment of the United States Constitution**
17 **(42 U.S.C. §1983)**

18 47. Plaintiff incorporates by reference herein, re-pleads and re-alleges paragraphs 1
19 through 46 of the complaint as though fully set forth herein.

20 48. Defendants' above-described conduct violated Plaintiff's right as provided for
21 under the Fourteenth Amendment to the United States Constitution to be free from deprivation of
22 life and/or liberty, showing callous disregard and deliberate indifference towards the rights and
23 interests of plaintiff.

24 WHEREFORE, plaintiff prays judgment against the defendants, and each of them, as
25 hereinafter set forth.

26 **FOURTH CAUSE OF ACTION**

27 **(Violation of Plaintiff's Right to Enjoy Civil Rights)**
28 **(Violation of CALIFORNIA CIVIL CODE §52.1)**

49. Plaintiff incorporates by reference herein, re-pleads and re-alleges paragraphs 1
through 48 of the complaint as though fully set forth herein.

1 agents, and each of them, approved, ratified, condoned, encouraged, sought to cover up, and/or
2 tacitly authorized the continuing pattern and practice of misconduct and/or civil rights violations
3 by officers of the City of Stockton.

4 58. Plaintiff is further informed and believes and thereon alleges that as a result of the
5 deliberate indifference of the defendants, and each of them as referenced hereinabove, and the
6 reckless and/or conscious disregard for the misconduct by defendants Does 33 through 80, and/or
7 each of them Plaintiff's constitutional rights were violated.

8 59. Plaintiff is further informed and believes and thereon alleges that as a result of the
9 deliberate indifference, reckless and/or conscious disregard for the misconduct by defendants and
10 Does 1 through 100, and/or each of them, the remaining defendants, and each of them,
11 encouraged these officers to continue their course of misconduct.

12 60. The aforementioned acts and/or omissions and/or deliberate indifference by high
13 ranking officials, including high ranking City of Stockton Police Department supervisors,
14 resulted in the deprivation of Plaintiff's constitutional rights including, but not limited to, the
15 following:

16 a. The right to be free from unreasonable searches and seizures, as guaranteed by the
17 Fourth and Fourteenth Amendments to the United States Constitution;

18 b. The right to not be deprived of life and liberty without due process of law, as
19 guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution;

20 c. The right to be free from the use from excessive force by police officers, which is
21 guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution;

22 d. The right to equal protection of the laws as guaranteed by the Fourteenth
23 Amendments to the United States Constitution; and/or

24 e. The right to be free from interference within the zone of privacy, as protected by
25 the Fourth and Ninth Amendments to the United States Constitution;

26 61. Said rights are substantive guarantees under the Fourth and/or Fourteenth
27 Amendments to the United States Constitution.

28 WHEREFORE, plaintiff prays judgment against the defendants, and each of them, as

1 hereinafter set forth.

2 **EIGHTH CAUSE OF ACTION**
3 **(General Negligence)**

4 62. Plaintiff incorporates by reference herein, re-pleads and re-alleges paragraphs 1
5 through 61 of the complaint as though fully set forth herein.

6 63. Defendants' above-described and/or omissions were negligent and careless in
7 violation both state and federal laws and otherwise breached duties of reasonable care.

8 64. As a legal result of the wrongful acts and/or omissions of the defendants, and each
9 of them, Plaintiff suffered damages as set forth above and hereinafter.

10 WHEREFORE, plaintiff prays judgment against the defendants, and each of them, as
11 hereinafter set forth.

12 **JURY DEMAND**

13 65. Plaintiff hereby demands a jury trial in this action.

14 **PRAYER**

15 WHEREFORE, plaintiff prays judgment against defendants, and each of them, as
16 follows:

- 17 1. For all general, compensatory, non-economic damages in an amount to be
18 determined according to proof;
- 19 2. For all past and future medical, incidental, economic, consequential and/or special
20 damages incurred by Plaintiff in an amount to be determined according to proof;
- 21 3. For all past and future lost earnings in an amount to be determined according to
22 proof;
- 23 4. For exemplary and punitive damages in an amount to be determined according to
24 proof at trial;
- 25 5. For reasonable attorneys' fees and costs of suit herein incurred;
- 26 6. For prejudgment and post-judgment interest in an amount to be determined
27 according to proof at trial;

28 //

1 7. For such other and further relief as the court may deem fair and proper.

2
3 Dated: May 9, 2016

DYER LAW FIRM

4
5 BY: 

MICHAEL J. DYER

DUSTIN J. DYER

Attorneys for Plaintiff

EXHIBIT A

CLAIM FOR DAMAGES

CITY OF STOCKTON

JUN 14 2015

CITY CLERK
CITY OF STOCKTON

Note: Claims for bodily injury or death, damage to personal property, or damage to growing crops must be filed on City of Stockton form F1366 not later than six months after the occurrence out of which the claims arose. All other claims must be filed on this form not later than one year after the occurrence out of which the claims arose. (Refer to California Government Code sections 910.4 and 911.2)

DIRECTION: The original claim must be filed with the City of Stockton City Clerk's Office, 425 North El Dorado Street, Stockton, California 95202. Retain the yellow copy for your records.

NAME OF CLAIMANT: Mr. Huber Kelly Date of Birth _____
(Last) (First) (Middle)

HOME ADDRESS/PHONE: _____
(Number/Street) (City/State/Zip Code) (Phone Number)

BUSINESS ADDRESS/PHONE: 5250 Clarendon Ave Ste. 119 Stockton, CA 95207 (209) 472-366
(Number/Street) (City/State/Zip Code) (Phone Number)

DIRECTION: Indicate to which address you wish notice sent ☐ HOME ☒ BUSINESS

WHEN DID INJURY OR DAMAGE OCCUR? 7-16-2014 A.M. P.M.
(Month/Day/Year) (Day of Week) (Time of Day)

WHERE DID INJURY OR DAMAGE OCCUR?
(Street address, intersecting streets, or other location) _____

Intersection of Thornton Ln., Pacific and Hammer Ln.

HOW DID INJURY OR DAMAGE OCCUR?
(Describe accident or occurrence in complete detail) _____

Robbery @ Bank of West

NAME OF CITY EMPLOYEE(S) INVOLVED? Unknown at this time

WHAT ACTION OR INACTION OF CITY EMPLOYEE(S) CAUSED YOUR INJURY OR DAMAGES? _____

Actions of officers related to robbery at bank of west

WHAT INJURIES OR DAMAGES DID YOU SUFFER? two bullet wounds, broken bones

in one leg; disability; emotional distress; scarring + disfigurement
SEE Exhibit 1 attached hereto.

TOTAL AMOUNT CLAIMED: ☒ Unlimited case--over \$25,000.00 ☐ Limited case--\$25,000.00 or less

If under \$10,000.00, please specify amount \$ _____

DIRECTION: Sign and date this Claim For Damages below. If the signer is not the claimant, indicate the relationship of the signer to the claimant.

(Signature)

1-14-15
(Month/Day/Year)

(Social Security Number--optional)

Attorney of Kelly Huber
(Relationship of signer, if not claimant)

DIRECTION: You may attach and include with this completed form any bills for medical treatment and expenses, and any estimates or bills for personal property damage. Questions may be referred to (209) 937-8807.

NOTE: PRESENTATION OF A FALSE CLAIM IS A FELONY. (Refer to California Penal Code section 72)

F1366-4/03

1 Michael J. Dyer, SBN: 109297
2 LAW OFFICES OF MICHAEL J. DYER
3 5250 Claremont Avenue, Ste. 119
4 Stockton, CA 95207
5 Phone: (209) 472-3668
6 Fax: (209) 472-3675

7 Attorney for KELLY HUBER

8 **CLAIM FOR INJURY: CALIFORNIA GOVERNMENT CODE SECTION 905 ET. SEQ.**
9 **AGAINST CITY OF STOCKTON AND STOCKTON POLICE DEPARTMENT**

10 KELLY HUBER

11 Claimant,

12 vs.

13 CITY OF STOCKTON AND THE
14 STOCKTON POLICE DEPARTMENT

15 Respondent,

PERSONAL INJURY CLAIM OF KELLY
HUBER

16 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:
17 PLEASE TAKE NOTICE THAT CLAIMANT KELLY HUBER HEREBY FILES A
18 PERSONAL INJURY CLAIM AGAINST CITY OF STOCKTON AND STOCKTON POLICE
19 DEPARTMENT PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 905, ET.
20 SEQ. AS FOLLOWS:

21 Government Code Section 910:

22 (a) Name and post address of the claimant:

23 Kelly Huber
24 C/O DYER LAW FIRM
25 5250 Claremont Ave. # 119
26 Stockton, CA 95207

27 (b) The post office address to which the person presenting the claim desires notices to be
28 sent:

//

CLAIM FOR INJURY: CALIFORNIA GOVERNMENT CODE SECTION 905 ET. SEQ.
AGAINST CITY OF STOCKTON AND STOCKTON POLICE DEPARTMENT

1 Kelly Huber
2 C/O DYER LAW FIRM
3 5250 Claremont Ave. # 119
4 Stockton, CA 95207

5 (209) 472-3668 phone
6 (209) 472-3675 fax
7 mdyer@dyerlawfirm.com

- 8 (c) The date, place and other circumstances of the occurrence or transaction which gave
9 rise to the claim asserted:

10 On or about July 16, 2014, unidentified officers of the Stockton Police Department
11 interrupted a robbery in progress at the Bank of the West branch located at or about
12 the intersection of Hammer Lane and Thornton Blvd. This interruption was carried
13 out in a negligent manner and in violation of Police Procedures causing the kidnapping
14 and gunshot injury of claimant. The negligence and violation of procedures included
15 but are not limited to: 1) confronting the robbers before they disengaged with claimant
16 and other victims; 2) confronting the robbers without a plan for containment and
17 communication; 3) failing to communicate with bank security which had video
18 cameras in and outside of the bank detailing the robbery in progress; 4) causing a
19 chase to ensue with gunfire; 5) placing Claimant in a more dangerous position upon
20 confrontation by Police; and other procedural violations unknown to Claimant at this
21 time.

- 22 (d) A general description of the indebtedness, obligation, injury, damage or loss incurred
23 so far as it may be known at the time of presentation of the claim:

24 Claimant was injured by two bullet wounds, one to each leg, which caused severe
25 injuries including, but not limited to, broken bones or bone to one leg; bullet holes and
26 tissue damage to both legs; damage from hardware repair to one leg; disability in
27 limitations to both legs; emotional distress, scarring, disfigurement, and lost wages
28 past and future.

- (e) The name or names of the public employee or employees causing the injury, damage,
or loss, if known:

Unknown at this time. Individual police officers and persons directing said officers.

- (f) The amount claimed:

Unknown at this time as Claimant is still recovering from her injuries and incurring
wage loss. It is believed the total claim will exceed \$500,000. This amount may
adjust upward or downward depending on future circumstances. The claim will be an
unlimited jurisdiction case.

1 I, declare under penalty of perjury, that to the best of my knowledge, the foregoing is true and
2 correct. Executed this 14th day of January 2015, in Stockton, California,

3 DYER LAW FIRM

4
5 By: 

6 Michael J. Dyer

7 Attorney for KELLY HUBER, claimant
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PROOF OF SERVICE

I, Michael J. Dyer, certify and declare as follows:

I am over the age of 18 years, and not a party to this action. My business address is 5250 Claremont Ave. Suite 119, Stockton, California 95207, which is located in the county where the mailing described below took place.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for service with the United States Postal Service, Overnight Delivery, Courier Delivery or Fax Delivery. Correspondence so collected and processed is deposited with the United States Postal Service, Overnight delivery service, courier or faxed that same day in the ordinary course of business.

On January 14, 2015, I caused to be served the CLAIM FOR INJURY: CALIFORNIA GOVERNMENT CODE SECTION 905 ET. SEQ. AGAINST CITY OF STOCKTON AND STOCKTON POLICE DEPARTMENT of KELLY HUBER in the following manner:

[xx] Personal Delivery The envelope(s) was addressed as identified below:

CITY OF STOCKTON
City Clerk's Office
City Hall
425 N. El Dorado St.
Stockton, CA 95202

[xx] Mail Delivery The envelope was addressed as identified below:

Stockton Police Dept.
22 E. Market St.
Stockton, CA 95202

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: January 14, 2015


MICHAEL J. DYER

EXHIBIT B

Debtor 1 City of Stockton

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: Eastern District of California

Case number 2012-32118

Official Form 410

Proof of Claim

12/15

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1 Identify the Claim

1. Who is the current creditor? Kelly Huber
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. Has this claim been acquired from someone else?
☐ No
☐ Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?			Where should payments to the creditor be sent? (if different)		
See Attached					
Name			Name		
Number	Street		Number	Street	
City	State	ZIP Code	City	State	ZIP Code
Contact phone			Contact phone		
Contact email			Contact email		

Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____

4. Does this claim amend one already filed?
☐ No
☐ Yes. Claim number on court claims registry (if known) _____

Filed on 01/14/2015
MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?
☐ No
☐ Yes. Who made the earlier filing? _____

Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☒ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 5,000,000.00 Does this amount include interest or other charges?
☒ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
 Limit disclosing information that is entitled to privacy, such as health care information.

Personal Injury Tort Claim- See Attached.

9. Is all or part of the claim secured? ☒ No
☐ Yes. The claim is secured by a lien on property.
 Nature of property:
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☐ Other. Describe: _____
 Basis for perfection: _____
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____

Amount of the claim that is secured: \$ _____

Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

Annual Interest Rate (when case was filed) _____ %

☐ Fixed
☐ Variable

10. Is this claim based on a lease? ☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? ☒ No
☐ Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☒ No

☐ Yes. Check all that apply:

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ _____

☐ Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/16 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3 Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 12/14/2015

MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name	Dustin J. Dyer		
	First name	Middle name	Last name
Title	Attorney for Claimant		
Company	Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	5250 Claremont Ave. Ste. 119		
	Number	Street	
	Stockton	CA	95207
	City	State	ZIP Code
Contact phone	209-472-3668		Email ddyer@dyerlawfirm.com

1 ADDENDUM TO THE AMENDED CLAIM OF KELLY HUBER
2 DEMAND FOR JURY TRIAL

3 Kelly Huber ("Claimant") hereby submits the amendment to her previously filed claim
4 (the "Amended Claim") in the above-captioned Chapter 9 Bankruptcy case of the City of
5 Stockton, California. The following is a summary only and does not fully describe all damages
6 and liabilities and is not intended to restrict, alter, waive or modify any right, remedy or other
7 matter. This proof of claim is based on the information currently available and is subject, from
8 time to time, to changes, amendments, and/or modifications including without limitation,
9 concerning the amounts, liabilities, damages, obligations, and/or duties owed to Claimant and to
10 assert additional claims, whether legal or equitable. In addition, this proof of claim is subject to
11 changes, amendments, and/or modification including to set forth additional amounts, liabilities,
12 damages, obligations or other matters owed to Claimant including to specify the amount of any
13 contingent, unmatured or unliquidated claims as they become non-contingent, matured and/or
14 liquidated.

15 THE INITIAL CLAIM

16 1. On January 14, 2015, Claimant timely filed the appropriate governmental claim
17 with the City of Stockton, in accordance with Section 910 and 915(b) of the California
18 Governmental Code, (the "Claim"). Claimant, through her counsel, personally filed the Claim
19 with the City of Stockton, City Clerk's Office, 425 North El Dorado St. Stockton, CA 95202. A
20 stamped filed true and complete copy of that Claim is attached hereto as **Exhibit A**.

21 2. *The First Amended Plan for the Adjustment of Debtors City of Stockton,*
22 *California, as Modified (August 8, 2014)* [Docket no 1645 (the "Amended Plan") classified the
23 Claim as General Liability Claim, which was defined as "a tort or contract Claim filed against
24 the City pursuant to the Government Claims Act, California Government Code section 810 et.
25 seq." Amended Plan, Pg. 13, Ln. 9-10.

26 3. This Amended Claim amended the Claim in that it (i) supplements the Claim with
27 additional documentation related to the pending state against City of Stockton.

28 //

BASIS OF CLAIM

4. Claimant was the bank manager of the Bank of the West located at 7810 Thornton Rd. in Stockton, CA (Thornton Branch) for several years prior to the incident which is the subject matter of this lawsuit.

5. As the manager of the branch, Claimant endured multiple robberies during her tenure. The Thornton Branch was robbed so many times that in both banking and law enforcement circles The Thornton Branch was referred to as the "Rob n Go".

6. On or about January 31, 2014, while Claimant was working as manager, two men, Gilbert Renteria Jr. and Alex Gregory Martinez, entered into the Thornton Branch on foot with guns and robbed the bank. As they left, Renteria and Martinez demanded the car keys from a bank employee and asked where the car was parked. As Renteria and Martinez exited the bank, they turned the wrong direction from where the employee's car was parked. After looking for the employee's vehicle for some time, Renteria and Martinez were able to locate the vehicle and fled making their successful escape without further incident. Neither Renteria nor Martinez were apprehended by law enforcement in connection with this robbery, even though the Police Dept. had sufficient evidence to identify and arrest one or both robbers.

7. On July 16, 2014, Renteria, Martinez and Jaime Ramos ("the robbers") returned to Thornton Branch to rob the bank once again. As in the previous robbery, the robbers approached the bank on foot, apparently dropped off by another accomplice. As the robbers entered the bank they followed the same routine as they had in the successful January robbery. While in the bank vault, Renteria again reassured Claimant and other hostages that no one would be hurt as long as they followed directions.

8. After grabbing as much money as possible, the robbers began to make their escape. Once again, the robbers demanded one of the employee's cars. Claimant offered her car to the robbers. After receiving the keys, the robbers demanded that Claimant exit the bank with them to point out which vehicle was hers, in order to avoid the parking lot confusion which occurred in the robbers' last getaway. After being yelled at several times "show me", Claimant agreed to exit the bank with the robbers to point out which vehicle was hers.

1 9. As Claimant and the robbers exited the branch in an easterly direction, she
2 immediately noticed a law enforcement officer who was pointing a shotgun at Claimant and the
3 robbers screaming for everyone to get on the ground or he would blow their heads off. Other
4 officers began approaching in close proximity as well. At this point, Claimant was grabbed and
5 held closely by the robbers and used as a human shield as they re-entered the bank.

6 10. Once back in the bank, the robbers grabbed two other hostages, placed the
7 hostages in front of each robber, and exited the bank, using the hostages as human shields. This
8 would not have happened if the police had followed their own armed robbery protocols by
9 staying out of sight until the robbers separated from the victims. This failure of protocol
10 more than any other factor, allowed the robbers to use Claimant and two other citizens to
11 become human shields that the robbers used in effort to escape. Had the police followed
12 their own protocol and common sense the robbers would have drove away without any
13 hostages and the only lives at risk in the chase would have been the criminals and their
14 pursuers. One hostage would not have been killed by the police shooting her ten times,
15 another hostage would not have been compelled to jump out of the moving car because
16 many police bullets were whizzing by, and Claimant would not have been shot in her right
17 leg and suffered a live long disabling and disfiguring injury. The number of law enforcement
18 officers increased and they also approached the bank. As the robbers and hostages got to
19 Plaintiff's vehicle, the robbers ordered Claimant to drive. At gunpoint, Claimant got into the
20 driver's seat from the passenger side and drove right past the police initiating the resulting chase.

21 11. Claimant was ordered by the robbers to exit the parking lot and drive north on
22 Thornton Rd. As Claimant approached the intersection of Thornton Rd. and Hammer Ln. she
23 was shot by Ramos. Ramos apparently accidentally fired his weapon and struck Claimant in her
24 right thigh. The bullet went through her right thigh and traveled down to her ankle breaking both
25 bones in her lower leg. Immediately after Ramos apologized for shooting plaintiff. This bullet
26 wound incapacitated Claimant and she was no longer able to drive the vehicle. The robbers
27 ordered Claimant to accelerate, but she told them she could not use her injured leg. The robbers
28 then opened the driver's side door and forced Claimant to roll out of the moving vehicle.

1 Plaintiff's vehicle then accelerated north on Thornton Rd with a Remteria at the wheel with
2 multiple law enforcement vehicles in pursuit.

3 12. Claimant was taken to the hospital for her injuries. As a result of the bullet,
4 Claimant has had surgery to repair her broken left leg/ankle and multiple months of rehabilitation
5 and recovery. Claimant was unable to walk for a significant period of time and required
6 assistance from a walker and/or cane for several months. Her injuries will affect her the rest of
7 her natural life. As a result of her injuries Claimant has not yet returned to work. Claimant filed
8 the required claim with the City in timely fashion. The City has failed to timely respond.

9 13. Under California Law, before a party may sue a governmental entity for money
10 damages, that party must first file a claim meeting the requirements of the California
11 Government Claims Act, California Government Code Section 810 et seq. The deadline for the
12 Claimants to assert a claim under the California Claims Act was January 16, 2015. On or about
13 January 14, 2015, Claimant timely filed such a claim. See **Exhibit A**.

14 14. The City of Stockton failed to act on the Claimants' governmental claim within
15 45 days of the date of filing thereby allowing Claimant to file a complaint in California Superior
16 Court, County of San Joaquin.

17 15. On June 28, 2012 prior to the events that injured Claimant, the City of Stockton
18 filed its bankruptcy petition in the United States District Court, Eastern District of California,
19 commencing the above-referenced bankruptcy case under Chapter 9 of Title 11 of the United
20 States Code (the "Bankruptcy Code").

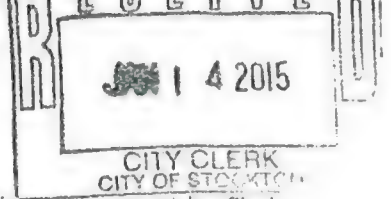
21 16. On or about August 8, 2014, the City of Stockton filed its *First Amended Plan for*
22 *the Adjustment of Debts of City of Stockton, California, as Modified (August 8, 2014)* [Docket
23 No. 1645] (the "Amended Plan")

24 17. The Amended Plan provided for the treatment of General Liability Claims in
25 "Class 14- Claims of Certain Tort Claimants" as follows:
26 The SIR Claim Portion of each Allowed General Liability Claim will be paid on
27 the Effective Date from Risk Management Internal Service Fund, and will receive
28 the same percentage payment on the dollar of Allowed Claim as will the holders
of Allowed Class 12 Claims. The Insured Portion of each Allowed General

EXHIBIT A

CLAIM FOR DAMAGES

CITY OF STOCKTON



Note: Claims for bodily injury or death, damage to personal property, or damage to growing crops must be filed on City of Stockton form F1366 not later than six months after the occurrence out of which the claims arose. All other claims must be filed on this form not later than one year after the occurrence out of which the claims arose. (Refer to California Government Code sections 910.4 and 911.2)

DIRECTION: The original claim must be filed with the City of Stockton City Clerk's Office, 425 North El Dorado Street, Stockton, California 95202. Retain the yellow copy for your records.

NAME OF CLAIMANT: Mr. Huber Kelly Date of Birth _____
(Last) (First) (Middle)

HOME ADDRESS/PHONE: _____
(Number/Street) (City/State/Zip Code) (Phone Number)

BUSINESS ADDRESS/PHONE: 5250 Claremont Ave Ste. 119 Stockton, CA 95207 (209) 472-3661
(Number/Street) (City/State/Zip Code) (Phone Number)

DIRECTION: Indicate to which address you wish notice sent ☐ HOME ☒ BUSINESS

WHEN DID INJURY OR DAMAGE OCCUR? 7-16-2014 A.M. P.M.
(Month/Day/Year) (Day of Week) (Time of Day)

WHERE DID INJURY OR DAMAGE OCCUR?
(Street address, intersecting streets, or other location) _____

Intersection of Thornton Ln., Pacific and Hammer Ln.

HOW DID INJURY OR DAMAGE OCCUR?
(Describe accident or occurrence in complete detail) _____

Robbery @ Bank of West

NAME OF CITY EMPLOYEE(S) INVOLVED? Unknown at this time

WHAT ACTION OR INACTION OF CITY EMPLOYEE(S) CAUSED YOUR INJURY OR DAMAGES? _____

Actions of officers related to robbery at bank of west

WHAT INJURIES OR DAMAGES DID YOU SUFFER? two bullet wounds, broken bones

in one leg; disability; emotional distress; scarring & disfigurement

TOTAL AMOUNT CLAIMED: ☒ Unlimited case--over \$25,000.00 ☐ Limited case--\$25,000.00 or less

If under \$10,000.00, please specify amount \$ _____

DIRECTION: Sign and date this Claim For Damages below. If the signer is not the claimant, indicate the relationship of the signer to the claimant.

[Signature] 1-14-15 _____
(Signature) (Month/Day/Year) (Social Security Number--optional)

Attorney of Kelly Huber
(Relationship of signer, if not claimant)

DIRECTION: You may attach and include with this completed form any bills for medical treatment and expenses, and any estimates or bills for personal property damage. Questions may be referred to (209) 937-8807.

NOTE: PRESENTATION OF A FALSE CLAIM IS A FELONY. (Refer to California Penal Code section 72) F1366-4/03

1 Michael J. Dyer, SBN: 109297
2 LAW OFFICES OF MICHAEL J. DYER
3 5250 Claremont Avenue, Ste. 119
4 Stockton, CA 95207
5 Phone: (209) 472-3668
6 Fax: (209) 472-3675

7 Attorney for KELLY HUBER

8 **CLAIM FOR INJURY: CALIFORNIA GOVERNMENT CODE SECTION 905 ET. SEQ.**
9 **AGAINST CITY OF STOCKTON AND STOCKTON POLICE DEPARTMENT**

10 KELLY HUBER

11 Claimant,

12 vs.

13 CITY OF STOCKTON AND THE
14 STOCKTON POLICE DEPARTMENT

15 Respondent,

PERSONAL INJURY CLAIM OF KELLY
HUBER

16 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

17 **PLEASE TAKE NOTICE THAT CLAIMANT KELLY HUBER HEREBY FILES A**
18 **PERSONAL INJURY CLAIM AGAINST CITY OF STOCKTON AND STOCKTON POLICE**
19 **DEPARTMENT PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 905, ET.**
20 **SEQ. AS FOLLOWS:**

21 **Government Code Section 910:**

22 (a) Name and post address of the claimant:

23 Kelly Huber
24 C/O DYER LAW FIRM
25 5250 Claremont Ave. # 119
26 Stockton, CA 95207

27 (b) The post office address to which the person presenting the claim desires notices to be
28 sent:

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CLAIM FOR INJURY: CALIFORNIA GOVERNMENT CODE SECTION 905 ET. SEQ.
AGAINST CITY OF STOCKTON AND STOCKTON POLICE DEPARTMENT

1 Kelly Huber
2 C/O DYER LAW FIRM
3 5250 Claremont Ave. # 119
4 Stockton, CA 95207

5 (209) 472-3668 phone
6 (209) 472-3675 fax
7 mdyer@dyerlawfirm.com

- 8 (c) The date, place and other circumstances of the occurrence or transaction which gave
9 rise to the claim asserted:

10 On or about July 16, 2014, unidentified officers of the Stockton Police Department
11 interrupted a robbery in progress at the Bank of the West branch located at or about
12 the intersection of Hammer Lane and Thornton Blvd. This interruption was carried
13 out in a negligent manner and in violation of Police Procedures causing the kidnapping
14 and gunshot injury of claimant. The negligence and violation of procedures included
15 but are not limited to: 1) confronting the robbers before they disengaged with claimant
16 and other victims; 2) confronting the robbers without a plan for containment and
17 communication; 3) failing to communicate with bank security which had video
18 cameras in and outside of the bank detailing the robbery in progress; 4) causing a
19 chase to ensue with gunfire; 5) placing Claimant in a more dangerous position upon
20 confrontation by Police; and other procedural violations unknown to Claimant at this
21 time.

- 22 (d) A general description of the indebtedness, obligation, injury, damage or loss incurred
23 so far as it may be known at the time of presentation of the claim:

24 Claimant was injured by two bullet wounds, one to each leg, which caused severe
25 injuries including, but not limited to, broken bones or bone to one leg; bullet holes and
26 tissue damage to both legs; damage from hardware repair to one leg; disability in
27 limitations to both legs; emotional distress, scarring, disfigurement, and lost wages
28 past and future.

- (e) The name or names of the public employee or employees causing the injury, damage,
or loss, if known:

Unknown at this time. Individual police officers and persons directing said officers.

- (f) The amount claimed:

Unknown at this time as Claimant is still recovering from her injuries and incurring
wage loss. It is believed the total claim will exceed \$500,000. This amount may
adjust upward or downward depending on future circumstances. The claim will be an
unlimited jurisdiction case.

1 I, declare under penalty of perjury, that to the best of my knowledge, the foregoing is true and
2 correct. Executed this 14th day of January 2015, in Stockton, California,

3 DYER LAW FIRM

4
5 By: 

6 Michael J. Dyer
7 Attorney for KELLY HUBER, claimant
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PROOF OF SERVICE

I, Michael J. Dyer, certify and declare as follows:

I am over the age of 18 years, and not a party to this action. My business address is 5250 Claremont Ave. Suite 119, Stockton, California 95207, which is located in the county where the mailing described below took place.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for service with the United States Postal Service, Overnight Delivery, Courier Delivery or Fax Delivery. Correspondence so collected and processed is deposited with the United States Postal Service, Overnight delivery service, courier or faxed that same day in the ordinary course of business.

On January 14, 2015, I caused to be served the CLAIM FOR INJURY: CALIFORNIA GOVERNMENT CODE SECTION 905 ET. SEQ. AGAINST CITY OF STOCKTON AND STOCKTON POLICE DEPARTMENT of KELLY HUBER in the following manner:

[xx] Personal Delivery The envelope(s) was addressed as identified below:

CITY OF STOCKTON
City Clerk's Office
City Hall
425 N. El Dorado St.
Stockton, CA 95202

[xx] Mail Delivery The envelope was addressed as identified below:

Stockton Police Dept.
22 E. Market St.
Stockton, CA 95202

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: January 14, 2015


MICHAEL J. DYER

EXHIBIT C

6

MARC A. LEVINSON (STATE BAR NO. 57613)
malevinson@orrick.com
PATRICK B. BOCASH (STATE BAR NO. 262763)
pbocash@orrick.com
LESLEY M. DURMANN (STATE BAR NO. 274851)
ldurmann@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
400 Capitol Mall, Suite 3000
Sacramento, California 95814-4497
Telephone: (916) 447-9200
Facsimile: (916) 329-4900

Attorneys for Debtor
City of Stockton

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:
CITY OF STOCKTON, CALIFORNIA,
Debtor.

Case No. 12-32118

D.C. No. OHS-96

Chapter 9

**STIPULATION BETWEEN THE CITY
OF STOCKTON AND KELLY HUBER
RE CLAIM NO. 307**

Date: April 12, 2016

Time: 9:30 a.m.

Dept: Courtroom 35

Judge: Hon. Christopher M. Klein

The City of Stockton, California (the "City"), and Kelly Huber ("Huber" and together with the City, the "Parties") hereby enter into the following stipulation ("Stipulation") and jointly request that the Court approve the Stipulation:

RECITALS

A. The City filed its chapter 9 petition on June 28, 2012, and the Bankruptcy Court for the Eastern District of California ("Bankruptcy Court") entered its Order For Relief [Dkt. No. 843] on April 1, 2013.

1 B. On July 16, 2014, Huber was injured during a bank robbery and hostage
2 situation. Huber timely filed a government claim with the City on January 14, 2015 pursuant to
3 the California Government Claims Act, California Government Code § 810 *et seq.*
4 (“Government Claim”), seeking damages against the City and others on account of the July 16,
5 2014 incident. Huber contends and the City disputes that the filing of the Government Claim
6 complied with the requirements of the City’s First Amended Plan for the Adjustment of Debts of
7 City of Stockton, California, as Modified (August 8, 2014) [Dkt. No. 1645] (“Plan”) relating to
8 the filing of proofs of claim.

9 C. Pursuant to California Government Code § 912.4, the City had 45 days
10 (through March 2, 2015), to expressly reject or deny the Government Claim in writing. Absent
11 express written rejection, the Government Claim is deemed rejected by operation of law. The
12 City did not take any express action to reject or deny the Government Claim, and therefore the
13 Government Claim was rejected by operation of law. The statute of limitations under state law
14 for claims arising out of the July 16, 2014 incident (“Claims”) within which Huber may timely
15 commence an action against the City and others as delineated in the Government Claim expires
16 on July 16, 2016 – two years from the date the Claims arose.

17 D. On February 4, 2015, the Bankruptcy Court confirmed the Plan. The Plan
18 went effective on February 25, 2015 (“Effective Date”). Pursuant to Article XI.B of the Plan
19 and § 524(a)(1) and (a)(2) of the Bankruptcy Code, the occurrence of the Effective Date gave
20 rise to an injunction against the commencement or continuation of legal actions seeking to
21 recover preconfirmation debts as personal liabilities of the City or to recover against the property
22 of the City on account of such debts (“Discharge Injunction”).

23 E. Article II.D of the Plan provides:

24 **All proofs of claim for Other Postpetition Claims arising on or after August**
25 **16, 2013, and requests for payment or any other means of preserving and**
26 **obtaining payment of Administrative Claims that have not been paid,**
27 **released, or otherwise settled, and all requests for approval of Professional**
28 **Claims, must be filed with the Bankruptcy Court and served upon the City**
 no later than 30 days after the date on which the Notice of Effective Date is
 served.

1 Plan, Article II.D at p. 32, ln. 14-19 (emphasis in original). The City's Notice of Effective Date
2 contained the same language.

3 F. The City's Notice of Effective Date was sent to Huber's counsel on March
4 9, 2015. The City contends and Huber disputes that the applicable bar date for Huber to file a
5 proof of claim was therefore April 8, 2015.

6 G. Huber initiated a lawsuit in the Superior Court for the County of San
7 Joaquin ("Superior Court"), case no. 39-2015-00327719-CU-CR-STK (the "Lawsuit"), by the
8 filing of a complaint on July 27, 2015. The complaint contained a prayer for damages against
9 the City, among other prayers for relief. The City filed a demurrer to the complaint on
10 September 3, 2015, arguing in part that Huber's claims against the City were barred by the
11 Discharge Injunction resulting from confirmation of the Plan.

12 H. Huber then filed a First Amended Complaint For Damages ("First
13 Amended Complaint") in the Superior Court on August 4, 2015. The First Amended Complaint
14 also contains a prayer for damages against the City, among other prayers for relief.

15 I. On December 3, 2015, Huber filed with the Bankruptcy Court her
16 Amended Proof of Claim [Claim No. 307] purporting to amend the Government Claim. The
17 Government Claim, as purportedly amended, shall be referred to herein as the "Huber Claim."

18 J. Huber contends and the City disputes that the Huber Claim is not time
19 barred by either Article II.D of the Plan or the subsequent Notice of Effective Date proof of
20 claim filing requirements.

21 STIPULATION

22 Based on the forgoing Recitals and on the facts particular to Huber (and to no other
23 person or such other persons' claims against the City), the Parties agree as follows:

24 1. Pursuant to Article XI.A of the Plan and § 944 of the Bankruptcy Code,
25 confirmation of the Plan discharged all non-excepted, pre-confirmation debts of the City in
26 exchange for the rights afforded in the Plan and the treatment of all holders of Claims (as the
27 term "Claims" is defined in the Plan). The Huber Claim was not excepted from such discharge.

28

1 2. The Government Claim shall be deemed to be a timely filed proof of
2 claim pursuant to the Ninth Circuit's informal proof of claim doctrine under *In re Sambo's*
3 *Restaurants, Inc.*, 754 F.2d 811, 812 (9th Cir. 1983), and its progeny. The Amended Proof of
4 Claim shall be deemed to be a properly and timely filed amendment to the Government Claim.

5 3. The Lawsuit is void pursuant to Bankruptcy Code § 524(a), and the Huber
6 shall dismiss the Lawsuit without prejudice within 14 days from the entry of a final, non-
7 appealable order approving this Stipulation. Each of the Parties agrees not to appeal the order
8 approving this Stipulation.

9 4. The statute of limitations under state law for Huber to commence an
10 action against the City among others on account of the Claims expires on July 16, 2016.

11 5. Conditioned upon the dismissal without prejudice of the Lawsuit, a
12 dismissal to which the City will not object, Huber shall be granted partial relief from the
13 Discharge Injunction in order to commence a new action in the Superior Court to litigate all
14 causes of action against the City, among other parties, on the underlying Claims (the "New
15 Action"). The Parties agree that the legal and factual merits of the Claims shall be determined
16 by the Superior Court, and that the Superior Court has jurisdiction to determine the validity and
17 amount of the Claims.

18 6. The complaint in the New Action shall state that: (1) any judgment,
19 settlement, or other final determination obtained by Huber against the City shall be treated in
20 accordance with the terms of the Plan for claimants holding claims classified in Class 14 –
21 Claims of Certain Tort Claimants; and (2) Huber shall not execute on any judgment or settlement
22 or seek recovery as against the City or any property of the City except as provided for in the
23 Plan.

24 7. Upon entry of any judgment, settlement or other final determination in the
25 New Action of the validity and the amount of the causes of action underlying the Huber Claim,
26 the City will be legally obligated to pay as damages such judgment, settlement, or other final
27 determination subject to the provisions of the Plan, including but not limited to, the application
28 of the discount as provided for in the treatment of Class 14 – Claims of Certain Tort Claimants

1 in which Huber Claim was placed. Notwithstanding any such judgment, settlement, or other
2 final determination, Huber shall waive only its right to collect the SIR Claim Portion (as "SIR
3 Claim Portion" is defined in the Plan) of the Huber Claim which the City would be required to
4 pay to Huber under the Plan.

5 8. As set forth in the Plan, "[t]he Insured Portion of each Allowed General
6 Liability Claim is not Impaired, and shall be paid by the applicable excess risk-sharing pool."
7 This Stipulation is not intended in any way to impair, restrict, diminish or enlarge Huber's ability
8 to recover the Insured Portion (as "Insured Portion" is defined in the Plan) of any eventual
9 judgment, settlement, or award against the City from the applicable excess risk sharing pool.
10 For the avoidance of any doubt, the "property of the City" referenced in paragraph 6 does not
11 include the Insured Portion.

12 9. Except as expressly provided in this Stipulation, all rights of the City to
13 object to or defend against the claims in the New Action on any ground are expressly preserved.
14 However, so long as the complaint and other allegations in the New Action are consistent with
15 the statements in Paragraph 6 of this Stipulation, the City shall not assert in the New Action that
16 (1) the Discharge Injunction prohibits Huber from pursuing the New Action in the Superior
17 Court, or (2) the New Action is barred by the applicable statute of limitations as long as the New
18 Action is filed by July 16, 2016.

19 10. The Parties consent to the entry of an order approving this Stipulation by
20 the Bankruptcy Court.

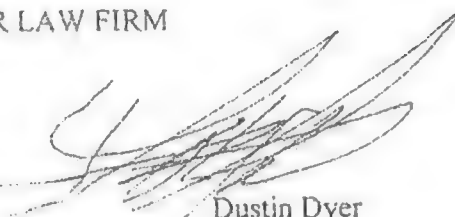
21 11. The Parties each shall pay their respective fees and costs arising out of this
22 Stipulation and any related pleadings.

23 12. This Stipulation may be executed in facsimile or electronic counterparts
24 and shall be deemed complete and effective as if it were executed as one original document.
25
26
27
28

1 Dated: March 28, 2016

DYER LAW FIRM

2
3 By:



Dustin Dyer
Attorneys for Kelly Huber

4
5
6
7 Dated: March 28, 2016

ORRICK, HERRINGTON & SUTCLIFFE LLP

8
9
10 By:



Marc A. Levinson
Attorneys for City of Stockton, Debtor

RICHARD C. WATTERS, ESQ. - 060162
AIDA S. MACEDO, ESQ. - 294632

(SPACE BELOW FOR FILING STAMP ONLY)

LAW OFFICES OF
MILES, SEARS & EANNI
A PROFESSIONAL CORPORATION
2844 FRESNO STREET
P.O. BOX 1432
FRESNO, CALIFORNIA 93716
TELEPHONE (559) 486-5200

Attorneys for **Plaintiffs**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DELILAH MARIE HAMPTON,	)	NO.
)	
Plaintiff,)	
	)	COMPLAINT FOR DAMAGES FOR
vs.	)	VIOLATION OF CIVIL RIGHTS
	)	(42 U.S.C. SECTION 1983)
COUNTY OF SAN JOAQUIN-SHERIFF'S)	
DEPARTMENT; CITY OF STOCKTON-	)	(JURY TRIAL DEMANDED)
a municipal corporation; Deputy)	
STEVE HEAD, Sheriff's Department;	)	1. VIOLATION OF CONSTITUTIONAL
Deputy P. FORGACH, Sheriff's	)	RIGHT TO BE FREE FROM
Department; Deputy BRIAN	)	UNREASONABLE SEARCHES
MORENO, Sheriff's Department;	)	AND SEIZURES
Deputy TERRY STANDART, Sheriff's)	
Department; Sergeant JASON	)	2. FALSE ARREST AND
WHELEN, Sheriff's Department;	)	IMPRISONMENT
Deputy BOB JOHNSON, Sheriff's)	
Department; Deputy ADAM HERRERO,	)	3. BATTERY
Sheriff's Department; Sergeant)	
JODY TOWERS, Sheriff's	)	4. MONELL CLAIM AGAINST CITY
Department; Deputy ROGER	)	AND COUNTY
GILLINGWATER, Sheriff's)	
Department; Lieutenant MIKE)	
ALAGNA, Sheriff's Department;)	
Officer TESS VILLINES,)	
Police Department; Deputy TERRY)	
SCHAEFFER, Sheriff's Department;)	
LOU GALIAZZO, Sheriff's)	
Department; Deputy PATRICK)	
CALLAHAN, Sheriff's Department;)	
Deputy GILBERT CHAVEZ, Sheriff's)	
Department; and DOES 1-20,)	
)	
Defendants.)	

INTRODUCTION

1. This action arises from the unlawful and unreasonably applied force, detention, and arrest of Delilah Hampton a twenty year old African-American woman, by San Joaquin County Deputy Sheriffs STEVE HEAD, P. FORGACH, BRIAN MORENO, TERRY STANDART, JASON WHELEN, BOB JOHNSON, ADAM HERRERO, JODY TOWERS, ROGER GILLINGWATER, MIKE ALAGNA, TERRY SCHAEFFER, LOU GALIAZZO, PATRICK CALLAHAN, GILBERT CHAVEZ and City of Stockton Police Officer TESS VILLINES on March 10, 2016 in Stockton, California. Plaintiff sues for the violation of civil rights pursuant to 42 U.S.C. Section 1983.

JURISDICTION AND VENUE

2. Plaintiff sues for violation of civil rights pursuant to 42 U.S.C. Sections 1983, 1985(2), 1985(3). This court has jurisdiction over such claims pursuant to 28 U.S.C. Sections 1331 and 1343, 1367(b); 1391(b).

3. The acts and omissions giving rise to Plaintiffs claims occurred in Stockton, California and therefore the appropriate venue for this action is the United States District Court for the Eastern District located in Sacramento, California.

4. Plaintiff alleges that compliance with California Government Code §§ 900, et seq., is preempted by invocation of Federal Question Jurisdiction 28 U.S.C. §1331, and application of Williams v. Horvath, 16 Cal.3d 834 (1976), and County of Los Angeles v. Superior Court, 78 Cal.App.4th 212 (2000). Plaintiff has alleged claims for relief arising under Fourth and Fourteenth Amendment to the Constitution and laws of the United States. Nevertheless, for the State Common Law claims, plaintiff did file

1 a governmental claim. Exhibit "A".

2 **IDENTIFICATION OF PARTIES**

3 5. At all times relevant hereto, Plaintiff DELILAH MARIE
4 HAMPTON (hereafter also "Plaintiff"), is and was a resident of
5 California.

6 6. At all times mentioned herein, defendant SAN JOAQUIN
7 COUNTY (hereafter also "COUNTY") is a governmental public entity
8 duly organized and existing under and by virtues of laws of the
9 State of California.

10 7. At all times mentioned herein, defendant CITY OF STOCKTON
11 (hereafter also "CITY") is a municipal corporation duly organized
12 and existing under and by virtues of laws of the State of
13 California.

14 8. At all times relevant herein, defendants STEVE HEAD, P.
15 FORGACH, BRIAN MORENO, TERRY STANDART, JASON WHELEN, BOB JOHNSON,
16 ADAM HERRERO, JODY TOWERS, ROGER GILLINGWATER, MIKE ALAGNA, TERRY
17 SCHAEFFER, LOU GALIAZZO, PATRICK CALLAHAN, GILBERT CHAVEZ, were
18 residents of the County of San Joaquin, and were Deputy Sheriffs,
19 sergeants, detectives, agents and representatives of the San
20 Joaquin County Sheriff's Department and employees, agents, and
21 representatives of the County of San Joaquin. At all times relevant
22 hereto, said defendants were acting within the course and scope of
23 their employment as a deputy, captain, sheriff, of the San Joaquin
24 County Sheriff's Department and committed the acts complained
25 herein while acting as such and is sued in their individual and
26 official capacity.

27 9. At all times relevant herein, defendant TESS VILLINES
28 (hereafter also "VILLINES"), was a resident of the City of

1 Stockton, and was a police officer, deputy Sheriff, sergeant,
2 detective, agent and representative of the City of Stockton Police
3 Department. At all times relevant hereto, said defendant was acting
4 within the course and scope of her employment as a police officer,
5 deputy, captain, sheriff, of the City of Stockton and committed the
6 acts complained herein while acting as such and is sued in her
7 individual and official capacity.

8 10. The true names and capacities of defendants DOES 1
9 through 20 and therefore plaintiffs sue said defendants by such
10 fictitious names and will move to amend to insert the true names of
11 said defendants when the true names identities and acts giving rise
12 to their liability in regard to the above-entitled action, become
13 known to plaintiffs. Plaintiffs are informed and believe and
14 therefore allege that each of the defendants designated herein a
15 DOE defendant is responsible in some manner for the events and
16 happenings referred to herein.

17 **FACTUAL ALLEGATIONS**

18 11. On March 10, 2016 PLAINTIFF visited the Superior Court of
19 California, County of San Joaquin located at 222 East Weber Avenue,
20 Stockton, California to observe a scheduled court proceeding.

21 12. After a short time inside the courtroom, PLAINTIFF was
22 told to exit the courtroom by defendant HEAD employed by the San
23 Joaquin County Sheriff's Department exited the courtroom. While
24 outside the courtroom, HEAD had a brief conversation with PLAINTIFF
25 and unlawfully applied force against her by throwing her against
26 the wall.

27 13. DEFENDANT HEAD unlawfully attempted to place her under
28 arrest without probable cause or legal justification. However, it

1 appears that the arrest was at least in part racially motivated.

2 14. Shortly, thereafter PLAINTIFF was thrown to the ground
3 and subjected by all DEFENDANTS to unreasonable and excessive force
4 while PLAINTIFF was handcuffed. PLAINTIFF was unjustifiably
5 arrested and criminally charged in violation of her civil rights.

6 **FIRST CAUSE OF ACTION**

7 **VIOLATION OF CONSTITUTIONAL RIGHT TO BE FREE FROM UNREASONABLE
8 SEARCHES AND SEIZURES**

[AGAINST ALL DEFENDANTS]

9 15. Plaintiffs restate and reiterate each and all of the
10 paragraphs and allegations set forth above, and make them part of
11 this cause of action as though fully set forth here.

12 16. This action is brought pursuant to 42 U.S.C. §1983 and
13 the Fourth Amendment of the Constitution.

14 17. At all times relevant hereto, PLAINTIFF possessed the
15 right, guaranteed by the Fourth Amendment of the United States
16 Constitution to be free from unreasonable searches and seizures by
17 peace officers acting under the color of law.

18 18. As described above, all DEFENDANTS, and DOES 1 through 20
19 violated PLAINTIFF's Fourth Amendment rights by unlawfully and
20 unreasonably detaining, handcuffing, arresting and imprisoning her
21 without reasonable suspicion or probable cause.

22 19. DEFENDANTS violated PLAINTIFF's Fourth Amendment rights
23 by unlawfully and unreasonably using force against her, which was
24 excessive and/or unnecessary under the totality of the
25 circumstances.

26 20. DEFENDANTS acted specifically with the intent to deprive
27 PLAINTIFF of her constitutional rights under the Fourth Amendment
28 to be free from unreasonable seizures.

21. As a direct and proximate result of the acts, conduct and omissions of DEFENDANTS, PLAINTIFF was made to lose her freedom and liberty for the period described above, in violation of the Fourteenth Amendment's procedural and substantive due process guarantees. During said incarceration and criminal prosecution plaintiff suffered personal and bodily injuries, and during said time she suffered and continues to suffer, severe and emotional psychological pain, suffering, anxiety, depression, anguish, shock, and fear. PLAINTIFF will require to hire medical specialists for treatment and therapy for her injuries.

22. The aforementioned acts of said DEFENDANTS were willful, wanton, malicious, and oppressive and said misconduct shocks the conscience thereby justifying the awarding of exemplary and punitive damages as to all non-municipal defendants, except the COUNTY which is statutorily immune.

WHEREFORE, plaintiffs pray judgment against the defendants named herein above, and each of them, as hereinafter set forth.

SECOND CAUSE OF ACTION

FALSE ARREST AND IMPRISONMENT

[all DEFENDANTS]

23. Plaintiff restates and reiterates each and all of the paragraphs and allegations set forth above, and make them part of this cause of action as though fully set forth here.

24. PLAINTIFF was wrongfully arrested by DEFENDANTS, who had no warrant for her arrest or probable cause to arrest her.

25. PLAINTIFF was harmed by the arrest and imprisonment of her.

///

26. The actions of DEFENDANTS were a substantial factor in causing PLAINTIFF harm.

27. PLAINTIFF has suffered and will suffer economic and noneconomic damages according to proof and in excess of the minimum jurisdiction of this court.

28. The aforementioned acts of said DEFENDANTS were willful, wanton, malicious, and oppressive and said misconduct shocks the conscience thereby justifying the awarding of exemplary and punitive damages as to all non-municipal defendants, except the COUNTY which is statutorily immune.

THIRD CAUSE OF ACTION

BATTERY

[against ALL DEFENDANTS]

29. PLAINTIFF restates and reiterates each and all of the paragraphs and allegations set forth above, and make them part of this cause of action as though fully set forth here.

30. DEFENDANTS and each of them touched plaintiff, threw her against the wall and ground as alleged hereinabove, with the intent to harm and offend PLAINTIFF.

31. PLAINTIFF did not consent to the touching.

32. PLAINTIFF was harmed and injured by the touching.

33. PLAINTIFF has suffered and will suffer economic and noneconomic damages according to proof and in excess of the minimum jurisdiction of this court.

34. The aforementioned acts of said DEFENDANTS were willful, wanton, malicious, and oppressive and said misconduct shocks the conscience thereby justifying the awarding of exemplary and punitive damages as to all non-municipal defendants, except the

COUNTY which is statutorily immune.

35. Wherefore, plaintiffs pray judgment against defendants, and each of them, as set forth below.

FOURTH CAUSE OF ACTION
MONELL CLAIM AGAINST CITY AND COUNTY

36. PLAINTIFF restates and reiterates each and all of the paragraphs and allegations set forth above, and make them part of this cause of action as though fully set forth here.

37. DEFENDANT CITY had a duty to adequately train, supervise, and discipline their police officers in order to protect members of the public, including PLAINTIFF, from being harmed by the police unnecessarily.

38. DEFENDANT COUNTY had a duty to adequately train, supervise and discipline their deputy Sheriffs in order to protect members of the public, including PLAINTIFF, from being harmed by such deputies unnecessarily.

39. Said DEFENDANTS were deliberately indifferent to such duties and thereby proximately caused injury to PLAINTIFF as complained herein.

WHEREFORE plaintiffs pray judgment against all DEFENDANTS; and DOES 1-20, and each of them, as follows:

- a. For general damages according to proof;
- b. For special damages according to proof;
- c. For costs of suit;
- d. For prejudgment interest as allowed by law;
- e. Attorneys' fees, as allowed by statutes;
- f. Punitive damages according to proof;

///

1 g. For such other and further relief as the court may
2 deem proper.

3 DATED: August 2, 2016

4 MILES, SEARS & EANNI

5
6 By: /s/ Aida S. Macedo
7 AIDA S. MACEDO
8 Attorneys for Plaintiff
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EXHIBIT A

To be Date Stamped By Clerk
Of the Board of Supervisors

County of San Joaquin

Print Form

CLAIM FOR DAMAGE OR INJURY**INSTRUCTIONS:**

Prepare in ink or typewriter. File original and one copy with Clerk of the Board of Supervisors,
San Joaquin County, 44 N. San Joaquin Street, Suite 627, Stockton, California 95202.
Use additional paper as necessary.

Name of Claimant: Hampton Delilah M.
 Home Address/Phone: Last 9469 Tuscany Court First Stockton, CA 95210 (510) 689-7660
Name/Number/Street City/State/Zip Code Phone
 Send Correspondence To: See Attachment (559) 486-5200
Name/Number/Street City/State/Zip Code Phone
 When did Injury or Damage Occur: 03/10/2016
Month/Day/Year Time of Day AM PM

WHERE DID INJURY OR DAMAGE OCCUR: Superior Court of California, County of San Joaquin,
222 East Weber Avenue, Stockton, CA 95202

HOW DID INJURY OR DAMAGE OCCUR: Upon information and belief the claimant contends
that San Joaquin County Sheriff and Stockton Police Department unlawfully
and unreasonably applied force, detained, and arrested Delilah Marie Hampton
leading to physical and emotional injuries, embarrassment and violation
of her civil rights. On March 10, 2016, Ms. Hampton was present in
Department 17 of the Stockton Superior Courthouse (cont. - See Attachment)

Identity of County Vehicle: (if applicable) N/A
 Name(s) of County Employee(s) involved: Deputy Steve Head; Deputy P. Forgach; Deputy
Brian Moreno; Deputy Terry Standart; Sergeant Jason Whelen; Deputy Bob
Johnson; Deputy Adam Herrero; Sergeant Jody Towers; (cont. - See Attachment)

WHAT INJURIES OR DAMAGE DID CLAIMANT SUFFER: As a result, Ms. Hampton suffered an
aggravation of pre-existing injuries to her shoulder and back resulting
in continued pain and suffering. Ms. Hampton additionally suffered and
continues to suffer from emotional distress, anxiety, embarrassment,
shock, and fear stemming from the physical force (cont. - See Attachment)

AMOUNT OF DAMAGE OR LOSS:	Property Damage or Cost of Repair	Medical Bills Past/Estimated Future	Loss of Income Past/Future	Other Expenses
Total Claim	\$3,000,000.00			

I declare under penalty of perjury that the forgoing is true and correct.

Signature AIDA S. MACEDO

Attorney

Relationship to Signer, if not the Claimant

05/27/2016

Date

White - County Counsel
 Yellow - County Counsel
 Pink - Claimant Pers.

NOTE: PRESENTATION OF A FALSE CLAIM IS A FELONY

8 (4/96)

Updated Address Revision 9/09

COUNTY OF SAN JOAQUIN

ATTACHMENT TO CLAIM FOR DAMAGE OR INJURY

Send Correspondence To: Delilah Marie Hampton
c/o Aida S. Macedo, Esq.
MILES, SEARS & EANNI
Post Office Box 1432
Fresno, California 93716

HOW DID INJURY OR DAMAGE OCCUR:

... to observe court proceedings. After a short time inside the courtroom, Ms. Hampton and the courtroom deputy employed by the San Joaquin County Sheriff's Department exited the courtroom. While outside the courtroom, Deputy Steve Head had a brief conversation with Ms. Hampton and attempted to place her under arrest without probable cause. Deputy Head called for backup in which numerous officers from the San Joaquin Sheriff's Department and Stockton Police Department, including but not limited to Deputy P. Forgach, Deputy Brian Moreno, Deputy Terry Standart, Sergeant Jason Whelen, Deputy Bob Johnson, Deputy Adam Herrero, Sergeant Jody Towers, Deputy Roger Gillingwater, Lieutenant Mike Alagna, Deputy Terry Schaeffer, Lou Galiazzo, Deputy Patrick Callahan, and Deputy Gilbert Chavez, responded. Ms. Hampton was thrown to the ground and numerous officers forcibly held her down and applied force while she was placed in handcuffs. Ms. Hampton was unjustifiably arrested and criminally charged in violation of her civil rights.

Name(s) of County Employee(s) involved:

... Deputy Roger Gillingwater, Lieutenant Mike Alagna, Deputy Terry Schaeffer, Lou Galiazzo, Deputy Patrick Callahan, and Deputy Gilbert Chavez

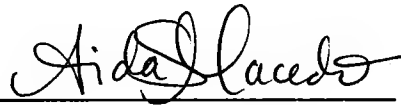
WHAT INJURIES OR DAMAGES DID CLAIMANT SUFFER:

... used by the officers, the subsequent arrest and criminal charges, and violation of her civil rights. Further, Ms. Hampton suffered loss of liberty, lost of time, inconvenience, and damage to her reputation.

_____ Jurisdiction over the claim of Delilah Marie Hampton would rest in federal court.

DATED: May 27, 2016

MILES, SEARS & EANNI

By: 

AIDA S. MACEDO

Attorneys for Claimant, Delilah Marie Hampton

1 PROOF OF SERVICE BY MAIL - C.C.P. §§1013(a), 2015.5

2 I, SYLVIA MEDINA, declare as follows:


3 My business address is MILES, SEARS & EANNI, 2844 Fresno
4 Street, Post Office Box 1432, Fresno, California, 93716. I am a
5 resident of, or employed in, Fresno County, the county where the
6 following mailing occurs. I am over the age of eighteen (18) years
7 and not a party to the within entitled action. I am readily
8 familiar with the practice of MILES, SEARS & EANNI for collection
9 and processing of correspondence for mailing with the United States
10 Postal Service. In accordance with that practice, correspondence
11 will be deposited with the United States Postal Service on the same
12 date set forth below in the ordinary course of business.

13 On May 27, 2016, I served the within **CLAIM FOR DAMAGE OR**
14 **INJURY** on the interested parties in said action by placing a true
15 copy thereof for deposit in the United States Postal Service at my
16 said place of business. The envelopes were sealed and placed for
17 collection and mailing on that date following ordinary business
18 practices. The names and addresses of the persons served as shown
19 on the envelopes are as follows:

20 Clerk of the Board of Supervisors
21 San Joaquin County
22 44 North San Joaquin Street, Suite 627
Stockton, California 95202

CERTIFIED MAIL
Original & One Copy

23 I declare under penalty of perjury under the laws of the
24 State of California that the foregoing is true and correct.
25 Executed this 27th day of May 2016, at Fresno, California.

26
27 
28 Sylvia Medina

DIRECTION: The original claim must be filed with the City of Stockton City Clerk's Office, 425 North El Dorado Street, Stockton, California 95202. Retain the yellow copy for your records.

NOTE: PRESENTATION OF A FALSE CLAIM IS A FELONY (Refer to California Penal Code Section 72)

**ATTACHMENT TO CLAIM FOR DAMAGES
CITY OF STOCKTON**

HOW DID INJURY OR DAMAGE OCCUR?

... On March 10, 2016, Ms. Hampton was present in Department 17 of the Stockton Superior Courthouse to observe court proceedings. After a short time inside the courtroom, Ms. Hampton and the courtroom deputy employed by the San Joaquin County Sheriff's Department exited the courtroom. While outside the courtroom, Deputy Steve Head had a brief conversation with Ms. Hampton and attempted to place her under arrest without probable cause.

WHAT ACTION OR INACTION OF CITY EMPLOYEE(S) CAUSED YOUR INJURY OR DAMAGES?

Deputy Head called for backup in which numerous officers from the San Joaquin Sheriff's Department as well as officers from Stockton Police Department, including but not limited to Officer Tess Villines, responded. Ms. Hampton was thrown to the ground and numerous officers forcibly held her down and applied force while she was placed in handcuffs. Ms. Hampton was unjustifiably arrested and charged in violation of her civil rights.

WHAT INJURIES OR DAMAGES DID YOU SUFFER?

... continued pain and suffering. Ms. Hampton additionally suffered and continues to suffer from emotional distress, anxiety, embarrassment, shock, and fear stemming from the physical force used by the officers, the subsequent arrest, and violation of her civil rights. Further, Ms. Hampton suffered loss of liberty, lost of time, inconvenience, and damage to her reputation.

Jurisdiction over the claim of Delilah Marie Hampton would rest in federal court.

DATED: May 27, 2016

MILES, SEARS & EANNI

By: _____



AIDA S. MACEDO

Attorneys for Claimant, Delilah Marie Hampton

1 PROOF OF SERVICE BY MAIL - C.C.P. §§1013(a), 2015.5

2 I, SYLVIA MEDINA, declare as follows:

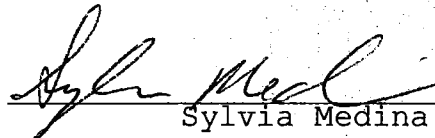
3 My business address is MILES, SEARS & EANNI, 2844 Fresno
4 Street, Post Office Box 1432, Fresno, California, 93716. I am a
5 resident of, or employed in, Fresno County, the county where the
6 following mailing occurs. I am over the age of eighteen (18) years
7 and not a party to the within entitled action. I am readily
8 familiar with the practice of MILES, SEARS & EANNI for collection
9 and processing of correspondence for mailing with the United States
10 Postal Service. In accordance with that practice, correspondence
11 will be deposited with the United States Postal Service on the same
12 date set forth below in the ordinary course of business.

13 On May 27, 2016, I served the within **CLAIM FOR DAMAGES** on
14 the interested parties in said action by placing a true copy
15 thereof for deposit in the United States Postal Service at my said
16 place of business. The envelopes were sealed and placed for
17 collection and mailing on that date following ordinary business
18 practices. The names and addresses of the persons served as shown
19 on the envelopes are as follows:

20 City of Stockton
City Clerk's Office
21 425 North El Dorado Street
Stockton, California 95202

CERTIFIED MAIL

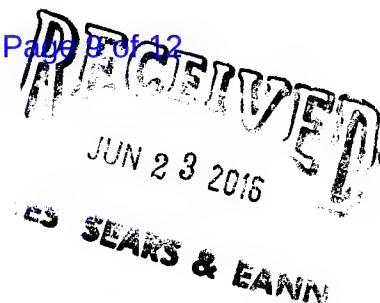
23 I declare under penalty of perjury under the laws of the
24 State of California that the foregoing is true and correct.
25 Executed this 27th day of May 2016, at Fresno, California.

26
27 
28 Sylvia Medina



RMS

RISK MANAGEMENT SERVICES



June 21, 2106

Aida S Macedo, Attorney
For Delilah Marie Hampton
P O Box 1432
Fresno CA 93716

RE: Delilah Marie Hampton v. County of San Joaquin
County Claim No.: C1606001

Dear Aida S Macedo:

NOTICE IS HEREBY GIVEN that the claim for damages you presented to the Clerk, Board of Supervisors of San Joaquin County for your client on June 1, 2016 was rejected on June 21, 2016.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6. You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

This notice applies only to actions for which a California Government Code claim is required.

Sincerely,

Kenneth R. Maiolini
/vps

PROOF OF SERVICE BY MAIL

I declare I am employed in the County of Sonoma, over the age of eighteen and not a party to the within cause.

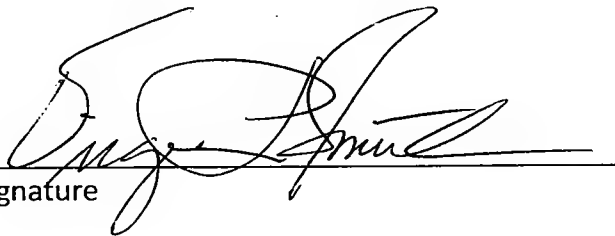
My business address is P. O. Box 724, Sebastopol, CA 95473.

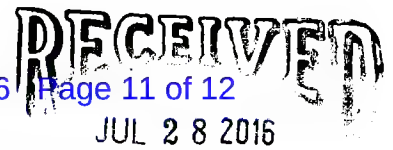
I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service and that correspondence would be deposited with the United States Postal Service the same day in the ordinary course of business.

I placed a copy of the rejection letter regarding San Joaquin County Claim No: C1606001 in an envelope, which envelope was then sealed and placed for collection and mailing on this date following ordinary business practices and addressed to the person listed as follows:

Aida S Macedo, Attorney
For Delilah Marie Hampton
P O Box 1432
Fresno CA 93716

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed in the County of Sonoma on June 21, 2016


Signature



CITY OF STOCKTON

SEARS & ROEBUCK

HUMAN RESOURCES DEPARTMENT
400 E. Main Street, 3rd Floor • Stockton, CA 95202
Phone: 209 / 937-8233 • Fax 209 / 937-8558 • www.stocktongov.com

July 25, 2016

Aida S. Macedo, Esq.
P.O. Box 1432
Fresno, CA 93716

Re: Claimant: Delilah Hampton
City File No.: 2015-2016-0352

NON-JURISDICTIONAL NOTICE

Notice is Hereby Given that the claim you presented to the Office of the City Clerk for the City of Stockton on May 31, 2016, was rejected on July 25, 2016. The research verifies the incident involves the San Joaquin County Sheriff's Department and would thus fall under the jurisdiction of the County. The City of Stockton and San Joaquin County are mutually exclusive agencies and the City is in no way involved in this matter.

Subject to certain exceptions you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6. The six (6) month filing limit applies only to claims arising under the California Tort Claims Act. (Government Code Section 810 et seq.) As to claims arising under either federal law and or state law other than the California Tort Claims Act, please refer to applicable statute of limitations.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

By 
Ken Minas
Liability Claims Investigator



1999

STATE OF CALIFORNIA)
)
COUNTY OF SAN JOAQUIN)

PROOF OF SERVICE

ss:

I am a citizen of the United States and am employed in the County of San Joaquin. I am over the age of eighteen (18) years and am not a party to the within above-titled action. My business address is 400 E. Main St. – 3rd Floor, Stockton, CA 95202.

I am readily familiar with the City of Stockton's practice for collection and processing of correspondence for mailing with the United States Postal Service and that the correspondence would be deposited with the United States Postal Service in the County of San Joaquin, California that same day in the ordinary course of business.

On the date noted below, I served the within **Non-Jurisdictional Notice** on the persons interested in said action by placing true copies thereof enclosed in sealed envelopes in the designated area for outgoing mail addressed as set forth below:

Aida S. Macedo, Esq.
P.O. Box 1432
Fresno, CA 93716

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Executed at Stockton, California.



Raeann Cycenas

07-25-2016

Date

2015-2016-0352
Delilah Hampton



CIVIL COVER SHEET

Case 2:16-cv-01816-MCE-AC Document 1-2 Filed 08/02/16 Page 1 of 3

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DELILAH MARIE HAMPTON

(b) County of Residence of First Listed Plaintiff San Joaquin

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Richard C. Watters, Esq. - 060162 (559) 486-5200
 Aida S. Macedo, Esq. - 294632
 MILES, SEARS & EANNI, 2844 Fresno Street, Fresno, CA 93721

DEFENDANTS

COUNTY OF SAN JOAQUIN-SHERIFF'S DEPARTMENT; CITY OF STOCKTON- a municipal corporation; Deputy STEVE HEAD, Sheriff's Department; Deputy P. FORGACH, (See Attachment)

County of Residence of First Listed Defendant San Joaquin

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. section 1983

Brief description of cause:

Violation of the 4th Amendment of the Constitution, 42 U.S.C. Section 1983

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/02/2016

SIGNATURE OF ATTORNEY OF RECORD

/s/ Aida S. Macedo

AIDA S. MACEDO, ESQ.

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

ATTACHMENT TO CIVIL COVER SHEET

DEFENDANTS (continued)

... Sheriff's Department; Deputy BRIAN MORENO, Sheriff's Department; Deputy TERRY STANDART, Sheriff's Department; Sergeant JASON WHELEN, Sheriff's Department; Deputy BOB JOHNSON, Sheriff's Department; Deputy ADAM HERRERO, Sheriff's Department; Sergeant JODY TOWERS, Sheriff's Department; Deputy ROGER GILLINGWATER, Sheriff's Department; Lieutenant MIKE ALAGNA, Sheriff's Department; Officer TESS VILLINES, Police Department; Deputy TERRY SCHAEFFER, Sheriff's Department; LOU GALIAZZO, Sheriff's Department; Deputy PATRICK CALLAHAN, Sheriff's Department; Deputy GILBERT CHAVEZ, Sheriff's Department; and DOES 1-20

Case 2:16-cv-01816-MCE-AC Document 1-2 Filed 08/02/16 Page 3 of 3
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Walter H. Walker, III (SBN 63117)
Peter J. Koenig (SBN 132437)
Beau R. Burbidge (SBN 267267)
WALKER, HAMILTON & KOENIG, LLP
50 Francisco Street, Ste. 460
San Francisco, CA 94133
Telephone: (415) 986-3339
Facsimile: (415) 986-1618

Attorneys for Plaintiffs FILIBERTO VALENCIA, SR.
and GRISELDA VALENCIA, individually and as
successors in interest to FILIBERTO VALENCIA, JR.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO DIVISION

FILIBERTO VALENCIA, SR. and GRISELDA
VALENCIA, individually and as successors in
interest to FILIBERTO VALENCIA, JR.

Plaintiffs,

v.

CITY OF STOCKTON, CHIEF ERIC JONES,
SERGEANT DANA MOSHER, OFFICER
KYLE AMANT, OFFICER JASON
DIGIULIO, and DOES 1-50, inclusive,

Defendants.

Case No.

**COMPLAINT FOR DAMAGES;
DEMAND FOR JURY TRIAL;
DECLARATION OF FILIBERTO
VALENCIA, SR.; DECLARATION OF
GRISELDA VALENCIA**

1. **Wrongful Death - Negligence;**
2. **Violation of Decedent's Fourth
Amendment Rights (42 U.S.C. §
1983);**
3. **Violation of Plaintiffs' Fourteenth
Amendment Rights (42 U.S.C. §
1983);**
4. **Violation of Bane Act (Cal. Civ.
Code § 52.1);**
5. **Assault;**
6. **Battery;**
7. **Intentional Infliction of Emotional
Distress;**
8. **Negligent Infliction of Emotional
Distress;**
9. **Inadequate and Reckless Training
(42 U.S.C. § 1983)**

1 Plaintiffs FILIBERTO VALENCIA, SR. and GRISELDA VALENCIA, individually and
2 as successors in interest to FILIBERTO VALENCIA, JR., complain against the above-named
3 defendants, and each of them, as follows:

4 **INTRODUCTION**

5 1. This is a civil rights wrongful death/survivor action for money damages arising
6 from the death of decedent Filiberto Valencia, Jr., on January 19, 2016, in Stockton, California,
7 against all defendants for violations of California tort law and United States Constitutionally
8 guaranteed rights. Filiberto was 26 years old at the time of his death, unmarried and without issue.

9 **JURISDICTION AND VENUE**

10 2. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988 and the Fourth and
11 Fourteenth Amendments to the United States Constitution and California wrongful death and
12 survivorship law. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343. This court
13 has supplemental jurisdiction over plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

14 3. The injuries alleged herein occurred in the County of San Joaquin, State of
15 California, and thus venue in this Court is proper pursuant to 28 U.S.C. §§ 1931 (b) and U.S.
16 Eastern District Local Rule of Court 3-120(B).

17 **PARTIES**

18 4. Plaintiffs are the natural parents, heirs, successors in interest and survivors of
19 decedent. Filed herewith is their declaration required by California Code of Civil Procedure §
20 377.32. They are persons described in California Code of Civil Procedure § 377.60(a) as persons
21 who may bring a wrongful death action and would be entitled to the property of the decedent by
22 intestate succession. In their own right, they bring their Claim for Wrongful Death and
23 Survivorship and their Claim under 42 U.S.C. § 1983 for deliberate indifference to their
24 constitutionally protected interests in the companionship of their son. They bring their claims
25 under 42 U.S.C § 1983 as successors in interest to Filiberto Valencia, Jr. for violations of Filiberto
26 Valencia, Jr.'s Constitutional rights.

27 5. Defendant City of Stockton was and is a public entity duly organized and existing
28 under the laws of the State of California. Defendant City of Stockton operates, manages, directs,

1 controls, supervises and employs members of the Fresno Police Department and DOES 1-40.
2 Defendant City of Stockton is liable for its actions alleged herein pursuant to California
3 Government Code section 815, and for the actions of its employees acting within the scope of their
4 employment pursuant to California Government Code section 815.2, among other statutes.

5 6. Defendant Eric Jones is, and at all relevant times mentioned herein was, the Chief
6 of Police for the City of Stockton. Defendant Jones is sued in his individual and official
7 capacities. Upon information and belief, Defendant Jones was the policy-maker for Defendant
8 City of Stockton on the matter alleged herein, relating to the customs, policies and practices of the
9 City of Stockton Police Department, including, but not limited to, customs, policies and practices
10 related to the training, supervision, hiring and discipline of police officers and with respect to the
11 management of the City of Stockton Police Department.

12 7. At all times mentioned herein, defendant Sergeant Dana Mosher, defendant Officer
13 Kyle Amant, defendant Officer Jason Digiulio and DOES 1-25 were employed as peace officers
14 by the City of Stockton Police Department, and each is sued individually in his or her capacity as a
15 peace officer. By engaging in the conduct described herein, each of these defendants exceeded the
16 authority vested in him or her as peace officers under the United States Constitution and as
17 employees of the City of Stockton and its Police Department.

18 8. The true names and capacities of Defendants sued herein as DOES 1-50 are not
19 presently known to plaintiffs, who therefore sue said defendants by such fictitious names.
20 Plaintiffs will move to amend this complaint to show their true names and capacities when same
21 are ascertained.

22 9. Plaintiffs are informed and believe and thereupon allege that each of the defendants
23 sued herein acted at least negligently, wrongfully, unreasonably, without justifiable cause and with
24 deliberate indifference to obvious known risks and consequences, and otherwise and therefore is
25 responsible in some manner for the events described herein that proximately caused the death of
26 Stephen Willis and the damages to plaintiffs.

27 10. Plaintiffs are informed and believe and thereupon allege that each of the defendants
28 at all relevant times herein was an agent, servant, or employee of each of the remaining

1 defendants, and in doing the things alleged herein was acting within the course and scope of that
2 relationship.

3 11. Plaintiffs are further informed and believe and thereupon allege that each of the
4 defendants, at all relevant times herein, gave consent, and assistance to each of the remaining
5 defendants and ratified and/or authorized the acts or omissions of each defendant.

6 12. Plaintiffs are further informed and believe and thereupon allege that each of the
7 defendants was jointly engaged in tortious activity resulting in the deprivation of plaintiffs'
8 Constitutional rights and other harm.

9 13. Plaintiffs are further informed and believe, and thereupon allege, that at all times
10 herein mentioned, the acts and omissions of the various defendants, and each of them, occurred
11 and contributed to the various acts and omissions of each and all of the other defendants in
12 proximately causing the injuries and damages herein alleged.

13 14. At all relevant times herein, each defendant acted under color of laws, statutes,
14 ordinances, policies, practices, customs and usages of the City of Stockton, State of California, or
15 the Stockton Police Department.

16 15. Plaintiffs filed a timely government claim pursuant to California Government Code
17 §910, et seq., which claim was rejected when it expired without timely action by the applicable
18 government defendants.

19 **FIRST CLAIM**

20 **(Wrongful Death-Negligence - Against Defendants City of Stockton, Sergeant Moser,**
21 **Officers Amant and Digiulio, and Does 1-50)**

22 16. Plaintiffs refer to each and every paragraph of this complaint and incorporate said
23 allegations by reference as though the same were herein fully set forth.

24 17. On or about January 19, 2016, decedent Filiberto Valencia, Jr., while undergoing a
25 paranoid episode as a result of an aberrant mental condition, was accosted by various law
26 enforcement officers including, but not limited to, Stockton Police personnel Mosher, Amant, and
27 Digiulio.

28 18. Upon cornering Filiberto Valencia, Jr., said officers handcuffed him, Tasered him,

1 and beat him with batons until he died.

2 19. The actions of Stockton Police Officers were conducted by or under the supervision
3 of defendant Sergeant Mosher and one or more senior officers in the Stockton Police Department,
4 sued herein as DOES 6-15, and were ratified by defendant Chief Jones, who authorized public
5 statements asserting the propriety of the Tasing, handcuffing, and beating of Filiberto Valencia,
6 Jr.

7 20. The attack on Filiberto Valencia, Jr., and the Tasing, beating and other acts
8 perpetrated by Stockton Police on Filiberto Valencia, Jr., were without cause and with
9 unreasonable and excessive force and deliberate indifference to his safety, health, and life.

10 21. By deliberately and intentionally Tasing and beating decedent Filiberto Valencia,
11 Jr., defendants Mosher, Amant, and Diguilio and DOES 1-8 intended to and did cause serious
12 injury and death to Filiberto Valencia, Jr. Such actions were in conscious and reckless disregard
13 of the risk of injury and death and under the circumstances there was no objectively reasonable
14 basis for the defendants' actions in Tasing and beating and ultimately killing decedent Filiberto
15 Valencia, Jr.

16 22. Reasonable alternatives were available to defendants other than to handcuff, Taser
17 and beat Filiberto Valencia, Jr., with batons. The death of Filiberto Valencia, Jr., was the
18 proximate and legal result of Tasing and beating him without having taken proper and
19 procedural steps to ascertain he was suffering from mental illness.

20 23. Plaintiffs are informed and believe that defendants herein and other officers
21 employed by or acting on behalf of other defendants concealed and falsified material information
22 and otherwise attempted to cover up their misconduct, violations of Constitutional rights and other
23 tortious and unlawful actions.

24 24. Defendants City of Stockton and DOES 30-50, and each of them, are vicariously
25 responsible and liable for the conduct of the employees that occurred within the course and scope
26 of their employment and duties, and pursuant to California Government Code § 815.2, *et seq.*

27 25. Prior to the death of decedent Filiberto Valencia, Jr., plaintiffs Filiberto, Sr., and
28 Griselda Valencia were in close and constant contact with decedent and were dependent on him

1 for love, comfort, companionship, familial relationship, support and maintenance. At all times
2 prior to his death, decedent was a loving, faithful, dutiful son to plaintiffs.

3 26. As a direct and proximate result of the acts and omissions of defendants as set forth
4 above, including the gross negligence, carelessness, and deliberate indifference to decedent's
5 safety and Constitutional rights, and the wrongful death of Filiberto Valencia, Jr., plaintiffs have
6 sustained compensable loss resulting from the loss of his care, comfort, society, attention,
7 services, affection, familial relationship, companionship, love, and support as provided in section
8 377.61 of the California Code of Civil Procedure, all in an amount not yet determined, but within
9 the general jurisdictional requisites of this Court, and to be proven at trial.

10 27. As a further direct and proximate result of the actions and omissions described
11 above, plaintiffs have incurred expenses for the care and treatment of decedent, including but not
12 limited to funeral and burial expenses, the amount of which will be proven at trial.

13 28. As a further direct and proximate result of the actions and omissions described
14 above, Filiberto Valencia, Jr., suffered personal injury and property damage before he died. As
15 successors in interest to the decedent, plaintiffs are entitled to recover all personal injury and
16 property damage sustained by the decedent before his death, as provided in section 377.34 of the
17 California Code of Civil Procedure.

18 29. At all relevant times herein, the actions and omissions of defendants and each of
19 them, as set forth above, were conducted or occurred deliberately, intentionally, knowingly,
20 maliciously, willfully, wantonly, and with conscious and reckless disregard for the rights and
21 safety of decedent Filiberto Valencia, Jr., entitling the plaintiffs to an award of exemplary
22 damages and as successors in interest to the decedent as provided by section 377.34 of the
23 California Code of Civil Procedure, and *Chaudhry v. City of Los Angeles*, 751 F.3d 1096 (9th Cir.
24 2014).

25 WHEREFORE, plaintiffs pray for judgment as set forth below.

26 ///

27 ///

28 ///

SECOND CLAIM

(Violation of Decedent's Fourth Amendment Rights, 42 U.S.C. § 1983 - Against All Defendants)

30. Plaintiffs refer to each and every paragraph of this complaint and incorporate said allegations by reference as though the same were herein fully set forth.

31. Plaintiffs are informed and believe that City of Stockton Police Department maintained customs, policies, and/or practices whereby Stockton Police Officers were encouraged, authorized and/or permitted to engage in civil rights violations such as employing unnecessary and unreasonable force, preparing and filing false police reports, and fabricating evidence; which course of conduct is tantamount to a custom, policy and practice of condoning and tacitly encouraging the abuse of police authority and disregard for the Constitutional rights of citizens.

32. Plaintiffs are further informed and believe that abuses of civil rights were the product of a culture of tolerance within the City of Stockton Police Department. This culture is rooted in the deliberate indifference of high-ranking City officials, including but not limited to Defendant Chief Jones and/or other City of Stockton Police Department officials and/or supervisors, individually and/or acting in concert with one another, who have routinely acquiesced in the misconduct and otherwise failed to take necessary measures to prevent and curtail such misconduct.

33. Plaintiffs are further informed and believe that the City of Stockton Police Department maintained customs, policies, and/or practices whereby they: failed to ensure that officers were not encouraged by their training officers, in the academy or elsewhere, to engage in acts of misconduct against citizens or to falsify reports and evidence; failed to fully and/or fairly investigate alleged police misconduct so that appropriate and timely disciplinary action and/or training could be taken regarding officers shown to have a history of complaints; and/or failed to promptly remove or terminate officers who repeatedly violated the rights of citizens and/or engaged in the types of misconduct alleged herein.

34. The incident described herein was caused by the deliberate indifference of Defendants City of Stockton, Jones, and/or other high-ranking Police Department officials and/or

1 supervisors with regard to the need for more or different training and/or supervision and/or
2 discipline of its police officers, including but not limited to Defendants Mosher, Amant, and
3 Digiulio.

4 35. Plaintiffs are further informed and believe that as a result of Defendant City of
5 Stockton's practice of indifference, it became an accepted practice within the City of Stockton
6 Police Department for police officers to abide by a "Code of Silence." Under this Code, police
7 officers charged with upholding the law routinely ignored or otherwise failed to report or take
8 action against fellow police officers who engaged in misconduct, including but not limited to
9 Defendants Mosher, Amant, and Digiulio.

10 36. Prior to the subject incident, Defendants City of Stockton, Jones and/or other high-
11 ranking members of the City of Stockton Police Department were on actual notice of problems
12 with the accountability of Stockton Police Officers, including but not limited to problems with the
13 ability of the Internal Affairs Bureau of the City of Stockton Police Department to fully, fairly,
14 and objectively investigate complaints concerning misconduct of members of the City of Stockton
15 Police Department.

16 37. The death of Filiberto Valencia, Jr., has never been fully, fairly and objectively
17 investigated, nor have the officers involved been properly disciplined or held accountable for their
18 conduct.

19 38. Plaintiffs are further informed and believe that the subject incident was the result of
20 a custom, policy, pattern and/or practice of Defendants City of Stockton, Jones and/or other high-
21 ranking officials of the City of Stockton and/or Stockton Police Department whereby citizens,
22 such as decedent, who lived in low-income and predominantly minority neighborhoods, were
23 disproportionately subjected to greater incidences of excessive force, police brutality, and
24 unreasonable searches and seizures.

25 39. Despite having notice of customs, policies, patterns and/or practices by members of
26 the City of Stockton Police Department, whereby citizens who lived in low-income and
27 predominantly minority neighborhoods were disproportionately subjected to greater incidences of
28 excessive force, police brutality, unreasonable searches and seizures. Defendants City of

1 Stockton, Jones, and/or other high-ranking officials of the City of Stockton and/or Stockton Police
2 Department failed to take any or appropriate remedial action to prevent such continuing
3 misconduct. Instead, the Police Department and Chief Jones had a custom, policy, pattern and/or
4 practice of making what were at times false, circumstantial or unfounded statements to the press
5 that at the time of the shooting the victim posed a threat to others.

6 40. As a result of customs, policies, practices and/or the lack thereof, Defendants City
7 of Stockton, Jones and/or other high-ranking supervisors of the City of Stockton and/or Stockton
8 Police Department have encouraged, authorized, ratified, condoned and/or have failed to remedy
9 continuing acts of misconduct and civil-rights violations, including, but not limited to, those which
10 have resulted in the damages alleged herein.

11 41. By and because of the conduct alleged above, Defendants Mosher, Amant,
12 Digiulio, Jones and DOES 1-50, and each of them, acting under color of the law of the State of
13 California, deprived decedent Filiberto Valencia, Jr., of his rights, privileges and immunities
14 secured by the Constitution of the United States, as well as Federal law, including but not limited
15 to rights secured by the Fourth Amendment of the United States Constitution to be free from
16 unreasonable searches and seizures.

17 42. At all relevant times herein, the actions and omissions of said defendants, and each
18 of them, as set forth above, occurred deliberately, intentionally, knowingly, maliciously, willfully,
19 wantonly and with conscious and reckless disregard for plaintiffs' rights, entitling plaintiffs to an
20 award of exemplary damages.

21 WHEREFORE, plaintiffs pray for judgment as set forth below.

22 **THIRD CLAIM**

23 **(Violation of Plaintiffs' Fourteenth Amendment Rights, 42 U.S.C § 1983 - - Against All**
24 **Defendants)**

25 43. Plaintiffs refer to each and every paragraph of this complaint and incorporate said
26 allegations by reference as though the same were herein fully set forth.

27 44. By the conduct alleged above, defendants, and each of them, acting under color of
28 the law of the State of California and with deliberate indifference to the rights of plaintiffs,

1 deprived said plaintiffs of their rights, privileges and immunities secured by the Constitution of the
2 United States, as well as Federal law, including but not limited to the Fourteenth Amendment's
3 right not to be deprived of life or liberty without due process of law.

4 45. As a direct and proximate result of the conduct by defendants alleged above, and
5 the wrongful death of decedent Filiberto Valencia, Jr., plaintiffs have sustained pecuniary loss
6 resulting from the loss of care, comfort, society, attention, services, affection, familial relationship,
7 companionship and love from decedent, all in an amount not yet determined, but within the
8 general jurisdictional requisites of this Court, and to be proven at trial.

9 46. As a further direct and proximate result of defendants' gross negligence,
10 carelessness and deliberate indifference to decedent's safety, and the wrongful death of decedent,
11 plaintiffs have incurred incidental expenses, including but not limited to funeral and burial
12 expenses, the amount of which will be proven at time of trial.

13 47. At all relevant times, the actions and omissions of defendants, and each of them, as
14 set forth above, were made deliberately, intentionally, maliciously, willfully, wantonly and with
15 conscious disregard for the rights of plaintiffs, thereby entitling plaintiffs to an award of
16 exemplary damages.

17 WHEREFORE, plaintiffs pray for judgment as set forth below.

18 **FOURTH CLAIM**

19 **(Violation of Bane Act, Cal. Civ. Code § 52.1, against all Defendants)**

20 48 Plaintiffs refer to each and every paragraph of this complaint and incorporate said
21 allegations by reference as though the same were herein fully set forth.

22 49. The Bane Act, California Civil Code section 52.1, allows anyone whose
23 constitutional or statutory rights have been interfered with by threats, intimidation, or coercion to
24 bring suit. A plaintiff bringing suit pursuant to the Bane Act need not allege that the defendants
25 acted with discriminatory intent, so long as the defendants' acts were accompanied by the requisite
26 threats, intimidation, or coercion. Where there has been an unlawful arrest and excessive force is
27 applied in making the arrest, there has been coercion sufficient to constitute a violation of the
28 Bane Act.

1
2 50. The attack on Filiberto Valencia, Jr., and the Tasing, beating and other acts
3 perpetrated by Stockton Police on Filiberto Valencia, Jr., were without cause and with
4 unreasonable and excessive force and deliberate indifference to his safety, health, and life. As
5 such, they were an unreasonable seizure in violation of decedent's rights secured by the Fourth
6 Amendment of the United States Constitution and Article I, Section 13 of the California
7 Constitution, among other statutes and constitutional provisions.

8 51. Through the conduct alleged herein, Defendants, and each of them, interfered or
9 attempted to interfere, through threats, intimidation, and/or coercion, with decedent's rights
10 secured under state and federal laws and under the state and federal Constitutions, including but
11 not limited to decedent's rights secured by the Fourth Amendment of the United States
12 Constitution and Article I, Section 13 of the California Constitution.

13 52. As a direct and proximate result of the conduct by defendants alleged above, and
14 the wrongful death of decedent Filiberto Valencia, Jr., plaintiffs have sustained pecuniary loss
15 resulting from the loss of care, comfort, society, attention, services, affection, familial relationship,
16 companionship and love from decedent, all in an amount not yet determined, but within the
17 general jurisdictional requisites of this Court, and to be proven at trial.

18 53. As a further direct and proximate result of defendants' conduct, plaintiffs have
19 incurred incidental expenses, including but not limited to funeral and burial expenses, the amount
20 of which will be proven at time of trial.

21 54. The conduct alleged herein entitles Plaintiffs to recover actual damages, civil
22 penalties, attorneys' fees and costs, and other allowable damages pursuant to the provisions of the
23 Banc Act.

24 55. At all relevant times, the actions and omissions of defendants, and each of them, as
25 set forth above, were made deliberately, intentionally, maliciously, willfully, wantonly and with
26 conscious disregard for the rights of plaintiffs, thereby entitling plaintiffs to an award of
27 exemplary damages.

28 WHEREFORE, plaintiffs pray for judgment as set forth below.

FIFTH CLAIM

(Assault against all Defendants)

56 Plaintiffs refer to each and every paragraph of this complaint and incorporate said allegations by reference as though the same were herein fully set forth.

57. Through the conduct alleged herein, defendants, and each of them, intended to cause harmful and/or offensive contact with decedent, and decedent reasonably believed he was about to be touched in a harmful and/or offensive manner.

58. Through the conduct alleged herein, defendants, and each of them, threatened to touch decedent in a harmful and/or offensive manner and it reasonably appeared to decedent that they were about to carry out that threat. Decedent did not consent to this conduct.

59. As a direct and proximate result of the conduct by defendants alleged above, and the wrongful death of decedent Filiberto Valencia, Jr., plaintiffs have sustained pecuniary loss resulting from the loss of care, comfort, society, attention, services, affection, familial relationship, companionship and love from decedent, all in an amount not yet determined, but within the general jurisdictional requisites of this Court, and to be proven at trial.

60. As a further direct and proximate result of defendants' conduct, plaintiffs have incurred incidental expenses, including but not limited to funeral and burial expenses, the amount of which will be proven at time of trial.

61. At all relevant times, the actions and omissions of defendants, and each of them, as set forth above, were made deliberately, intentionally, maliciously, willfully, wantonly and with conscious disregard for the rights of plaintiffs, thereby entitling plaintiffs to an award of exemplary damages.

WHEREFORE, plaintiffs pray for judgment as set forth below.

SIXTH CLAIM

(Battery against all Defendants)

62 Plaintiffs refer to each and every paragraph of this complaint and incorporate said allegations by reference as though the same were herein fully set forth.

63. Through the conduct alleged herein, defendants, and each of them, caused decedent

1 to be touched with the intent to harm and offend decedent, and decedent did not consent to this
2 touching.

3 64. As a direct and proximate result of the conduct by defendants alleged above, and
4 the wrongful death of decedent Filiberto Valencia, Jr., plaintiffs have sustained pecuniary loss
5 resulting from the loss of care, comfort, society, attention, services, affection, familial relationship,
6 companionship and love from decedent, all in an amount not yet determined, but within the
7 general jurisdictional requisites of this Court, and to be proven at trial.

8 65. As a further direct and proximate result of defendants' conduct, plaintiffs have
9 incurred incidental expenses, including but not limited to funeral and burial expenses, the amount
10 of which will be proven at time of trial.

11 66. At all relevant times, the actions and omissions of defendants, and each of them, as
12 set forth above, were made deliberately, intentionally, maliciously, willfully, wantonly and with
13 conscious disregard for the rights of plaintiffs, thereby entitling plaintiffs to an award of
14 exemplary damages.

15 WHEREFORE, plaintiffs pray for judgment as set forth below.

16 **SEVENTH CLAIM**

17 **(Intentional Infliction of Emotional Distress Against Sergeants Mosher, Officers Amant and**
18 **Digiulio, and DOES 1-15)**

19 67. Plaintiffs refer to each and every paragraph of this complaint and incorporate said
20 allegations by reference as though the same were herein fully set forth.

21 68. The conduct of defendants Mosher, Amant, Digiulio and DOES 1-15 in
22 handcuffing Filiberto Valencia, Jr., and in Tasing and beating him with their batons was
23 outrageous in concept and execution.

24 69. The conduct of said defendants was outrageous and intentionally caused, or was
25 performed with reckless disregard for the probability of causing, emotional distress to Filiberto
26 Valencia, Jr.

27 70. Before his death, Filiberto Valencia, Jr., suffered severe or extreme emotional
28 distress as a direct and proximate result of the outrageous conduct of said defendants.

71. The conduct herein alleged was malicious and oppressive, entitling plaintiffs, as successors in interest to Filiberto Valencia, Jr., are entitled to an award of exemplary damages.

WHEREFORE, plaintiffs pray for judgment against defendants Mosher, Amant, Digiulio and DOES 1-15, and each of them, as set forth below.

EIGHTH CLAIM

(Negligent Infliction of Emotional Distress Against Sergeants Mosher, Officers Amant and Digiulio, and DOES 1-15)

72. Plaintiffs refer to each and every paragraph of this complaint and incorporate said allegations by reference as though the same were herein fully set forth.

73. The conduct of defendants Mosher, Amant, Digiulio and DOES 1-15 in handcuffing Filiberto Valencia, Jr., and in Tasing and beating him with their batons was outrageous in concept and execution.

74. The conduct of said defendants, as described herein, was negligent.

75. Before his death, Filiberto Valencia, Jr., suffered severe or extreme emotional distress as a direct and proximate result of the outrageous conduct of said defendants.

WHEREFORE, plaintiffs pray for judgment against defendants Mosher, Amant, Digiulio and DOES 1-15, and each of them, as set forth below.

NINTH CLAIM

(Inadequate and Reckless Training, 42 U.S.C. §1983 - - Against City of Stockton, Chief Jones, and DOES 30-50)

76. Plaintiffs refer to paragraphs 1 through 52 above and incorporate them in full by this reference.

77. Prior to and on January 19, 2016, employees and agents of defendants City of Stockton, Chief Jones, and DOES 30-50, and each of them, in the capacity of official policy makers for the City of Stockton, undertook the training, retraining, supervision and discipline of police and other law enforcement officers they employed or caused to be employed.

78. The acts and/or omissions alleged in the complaint herein are indicative and representative of a repeated course of conduct by members of the City of Stockton Police

1 Department, including but not limited to failing or refusing to recognize signs and indications of
2 mental illness, which course of conduct is tantamount to a custom, policy and practice of
3 condoning and tacitly encouraging the abuse of police authority and disregard for the
4 Constitutional rights of citizens.

5 79. Plaintiffs are further informed and believe and thereon allege that the acts alleged
6 herein are the direct and proximate result of the deliberate indifference of defendants City of
7 Stockton, Chief Jones, and DOES 30-50, and each of them, to repeated acts of police misconduct
8 that have been tacitly authorized, encouraged or condoned by City of Stockton, Chief Jones, and
9 DOES 30-50, and each of them.

10 80. The injuries to plaintiffs and death of decedent were the foreseeable and proximate
11 result of said customs, policies, patterns and/or practices of the City of Stockton, Chief Jones, and
12 DOES 30-50, and each of them.

13 81. Plaintiffs are further informed and believe and thereon allege that the damages
14 sustained as alleged herein were the direct and proximate result of City of Stockton's, Chief
15 Jones's and DOES 30-50's customs and/or policies and deliberate indifference in the training,
16 retraining, supervision and/or discipline of members of the City of Stockton Police Department
17 both in use of force and in failing or refusing to recognize signs and indications of mental illness.

18 82. Plaintiffs are further informed and believe and upon such information and belief
19 allege that plaintiffs' damages and injuries were caused by customs, policies, patterns or practices
20 of the City of Stockton, Chief Jones, DOES 30-50, and each of them, of deliberate indifference in
21 the training, retraining, supervision and/or discipline of members of the City of Stockton Police
22 Department and/or other law enforcement officers acting in concert with them, including but not
23 limited to defendants Mosher, Amant, Digiulio and DOES 1-15.

24 83. The actions of the individual defendants and DOES 1-50 conformed to official
25 policy, custom or practice of the City of Stockton.

26 84. The aforementioned customs, policies or practices of defendant City of Stockton,
27 Chief Jones, and DOES 30-50, and each of them, resulted in the deprivation of plaintiffs'
28 Constitutional rights.

1 WHEREFORE, plaintiffs pray for judgment against defendants City of Stockton, Chief
2 Jones, and DOES 30-50, and each of them, as set forth below.

3 **PRAYER FOR RELIEF**

4 Plaintiffs pray for judgment against defendants, and each of them, as follows:

- 5 1. For compensatory damages in a sum to be determined at the time of trial;
- 6 2. For general damages in a sum to be determined at the time of trial;
- 7 3. For treble damage as provided by law, including but not limited to California Civil
8 Code § 52;
- 9 4. For punitive damages in an amount appropriate to punish or make an example of
10 the individually named police officers, in an amount according to proof;
- 11 5. For civil penalties as provided by law, including but not limited to California Civil
12 Code § 52;
- 13 6. For prejudgment interest;
- 14 7. For attorneys' fees as provided by law, including but not limited to 42. U.S.C. §
15 1988 and California Civil Code § 52;
- 16 8. For costs of suit incurred herein; and
- 17 9. For such other and further relief as the Court may deem just and proper.

18 DATED: August 31, 2016

19 WALKER, HAMILTON & KOENIG, LLP

20
21 By: /s/ Walter H. Walker, III
22 Walter H. Walker, III
23 Attorney for Plaintiffs FILIBERTO
24 VALENCIA, SR. and GRISELDA
25 VALENCIA, individually and as
26 successors in interest to FILIBERTO
27 VALENCIA, JR.
28

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues herein alleged.

DATED: August 31, 2016

WALKER, HAMILTON & KOENIG, LLP

By: /s/ Walter H. Walker, III

Walter H. Walker, III
Attorney for Plaintiffs FILIBERTO
VALENCIA, SR. and GRISELDA
VALENCIA, individually and as
successors in interest to FILIBERTO
VALENCIA, JR.

DECLARATION OF FILIBERTO VALENCIA, SR.
AS FILIBERTO C. VALENCIA'S BENEFICIARY AND SUCCESSOR IN INTEREST

I, FILIBERTO VALENCIA, SR., declare:

1. I am the father of decedent Filiberto C. Valencia ("Decedent") who died on January 19, 2016, in Stockton, California. I am currently married to Griselda Valencia, Decedent's mother. A certified copy of Decedent's death certificate is attached hereto as **EXHIBIT A**.

2. No proceeding has been, is now being, or will be conducted in California or any other state for administration of Decedent's estate.

3. Decedent died intestate. Decedent never married and never had a domestic partner. Decedent had no children, stepchildren, or other issue. Decedent was living with me in my residence at the time of his death.

4. I am Decedent's beneficiary as defined in Probate Code section 24. I am therefore entitled to Decedent's patient records pursuant to Health and Safety Code section 123105(e)(4).

5. As Decedent's father, I am Decedent's heir and Decedent's estate passes to me and my wife equally pursuant to Probate Code section 6402(b). I am also a beneficiary of Decedent's estate pursuant to Code of Civil Procedure section 377.10. I am also Decedent's successor in interest pursuant to Code of Civil Procedure section 377.11, and I, along with my wife, succeed to Decedent's interest in any action or proceeding.

6. No other person has a superior right to commence any action at law or to be substituted for Decedent in any pending action at law.

7. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: March 6, 2016

By: Filiberto Valencia
FILIBERTO VALENCIA, SR.

EXHIBIT A

SAN JOAQUIN COUNTY

PUBLIC HEALTH SERVICES

STOCKTON, CALIFORNIA

3052016012402

CERTIFICATE OF DEATH

3201639000257

STATE FILE NUMBER 3052016012402		LOCAL REGISTRATION NUMBER 3201639000257	
1. NAME OF DECEASED - FIRST (Given) FILIBERTO		3. LAST (Family) VALENCIA	
2. MIDDLE CARRILLO		4. DATE OF BIRTH 11/02/1989	
5. AGE Yrs 26		6. SEX M	
7. BIRTH STATE/FOREIGN COUNTRY CA		8. SOCIAL SECURITY NUMBER [REDACTED]	
9. BIRTH STATE/FOREIGN COUNTRY CA		10. SOCIAL SECURITY NUMBER [REDACTED]	
11. EVER IN U.S. ARMED FORCES <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK		12. MARRIAGE STATUS (at time of death) NEVER MARRIED	
13. EDUCATION - Highest Grade Completed 12 NO		14. DATE OF DEATH 01/19/2016	
15. USUAL OCCUPATION - Type of work for most of life. DO NOT USE RETIRED FARM LABORER		16. HOURS (24 hours) 1850	
17. DECEASED'S RACE - Specify as 1 or 2 race may be listed (see instructions on back) MEXICAN		18. YEARS IN OCCUPATION 6	
19. PLACE OF BIRTH (State, County, and Number or Locality) 3234 BARBARA STREET			
20. CITY STOCKTON		21. COUNTY/PREFECTURE SAN JOAQUIN	
22. ZIP CODE 95205		23. YEARS IN COUNTRY 26	
24. STATE/FOREIGN COUNTRY CA		25. YEARS IN COUNTRY 26	
26. NAME OF SURVIVING SPOUSE (Last, First, Middle) FILIBERTO VALENCIA, FATHER			
27. NAME OF SURVIVING SPOUSE (Last, First, Middle) FILIBERTO		28. LAST (Birth Name) VALENCIA	
29. NAME OF FATHER (Last, First, Middle) GRISelda		30. LAST (Birth Name) CARRILLO	
31. NAME OF MOTHER (Last, First, Middle) GRISelda		32. LAST (Birth Name) CARRILLO	
33. DATE OF BIRTH 01/26/2016		34. PLACE OF BIRTH (State, County, and Number or Locality) SAN JOAQUIN CATHOLIC CEMETERY	
35. TYPE OF BIRTH (e.g., home, hospital, etc.) BU		36. SIGNATURE OF SURVIVING SPOUSE KRISTI DAVIS	
37. NAME OF FUNERAL ESTABLISHMENT CANO FUNERAL HOME		38. DATE OF DEATH 01/22/2016	
39. PLACE OF DEATH RESIDENCE		40. IF OTHER THAN HOSPITAL, SPECIFY ONE <input type="checkbox"/> P <input type="checkbox"/> ENVOY <input type="checkbox"/> DCA <input type="checkbox"/> Hospice <input type="checkbox"/> Nursing Home <input type="checkbox"/> Home <input checked="" type="checkbox"/> Other	
41. CITY SAN JOAQUIN		42. COUNTY STOCKTON	
43. STREET 3133 NICOLE STREET		44. ZIP CODE 95205	
45. CAUSE OF DEATH PENDING HISTOLOGY AND TOXICOLOGY		46. IF BODYPART PERFORMED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
47. IF BODYPART PERFORMED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		48. IF BODYPART PERFORMED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
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DECLARATION OF GRISELDA VALENCIA
AS FILIBERTO C. VALENCIA'S BENEFICIARY AND SUCCESSOR IN INTEREST

I, GRISELDA VALENCIA, declare:

1. I am the mother of decedent Filiberto C. Valencia ("Decedent") who died on January 19, 2016, in Stockton, California. I am currently married to Filiberto Valencia, Sr., Decedent's father. A certified copy of Decedent's death certificate is attached as **EXHIBIT A**.

2. No proceeding has been, is now being, or will be conducted in California or any other state for administration of Decedent's estate.

3. Decedent died intestate. Decedent never married and never had a domestic partner. Decedent had no children, stepchildren, or other issue. Decedent was living with me in my residence at the time of his death.

4. I am Decedent's beneficiary as defined in Probate Code section 24. I am therefore entitled to Decedent's patient records pursuant to Health and Safety Code section 123105(e)(4).

5. As Decedent's mother, I am Decedent's heir and Decedent's estate passes to me and my husband equally pursuant to Probate Code section 6402(b). I am also a beneficiary of Decedent's estate pursuant to Code of Civil Procedure section 377.10. I am also Decedent's successor in interest pursuant to Code of Civil Procedure section 377.11, and I, along with my husband, succeed to Decedent's interest in any action or proceeding.

6. No other person has a superior right to commence any action at law or to be substituted for Decedent in any pending action at law.

7. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: March 6, 2016

By: GRISELDA VALENCIA
GRISELDA VALENCIA

EXHIBIT A

FILED

SEP 02 2016

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [Signature]
DEPUTY CLERK

Name Bonny Robinson
Street Address 220 West Harding Wy.
City and County Stockton
State and Zip Code CA 95204
Telephone Number (209) 271-2448

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Bonny Robinson
Carolyn Hawkins Robinson

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-against-

Stockton Unified School
District.

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Complaint for a Civil Case

2:16-CV-2111 KJM GGH PS

Case No. _____

(to be filled in by the Clerk's Office)

Jury Trial: ☐ Yes ☐ No
(check one)

1. Mr. Anderson
2. Julie Penn
3. Mr. Jeff Kuller
4. Sergio E. Betancourt
5. Mr. Mark Hageman
6. Dee, Alimbini

7. Darren Sandoval SID # 1560
8. Elena Cebrenos (13) Julie Pagnin
9. Tienaza, Laurie
10. Carman Quiroz
11. Maryann, Santella
12. Shannae Laney

Defendant No. 3

Name Carolyn Robinson
 Job or Title Cook II. (SUSD).
 (if known)
 Street Address 620 West Harding Wy
 City and County Stockton
 State and Zip Code California 95204
 Telephone Number (209) 271-6448

Defendant No. 4

Name C. R.
 Job or Title (Student)
 (if known)
 Street Address 620 W. Harding Wy
 City and County Stockton
 State and Zip Code California 95204
 Telephone Number (209) 271-6448.

II. Basis for Jurisdiction

Federal Courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in Federal Court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one state sues a citizen of another state or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same state as any plaintiff.

What is the basis for Federal Court jurisdiction? *(check all that apply)*

☒ Federal question

☐ Diversity of citizenship

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	<u>Bonny Robinson / Carolyn Robinson</u>
Street Address	<u>620 West Harding Wy.</u>
City and County	<u>Stockton</u>
State and Zip Code	<u>California</u>
Telephone Number	<u>(209) 271-6448.</u>

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name	<u>Mr. Anderson</u>
Job or Title (if known)	<u>School principal</u>
Street Address	<u>Jane Friedrichs High School.</u>
City and County	<u>1141 E. Weber Ave.,</u>
State and Zip Code	<u>Stockton CA 95204</u>
Telephone Number	<u>(209) 933-7340</u>

Defendant No. 2

Name	<u>Julie Pagnini</u>
Job or Title (if known)	<u>Counselor</u>
Street Address	<u>1141 E. Weber Ave.</u>
City and County	<u>Stockton</u>
State and Zip Code	<u>California 95204.</u>
Telephone Number	<u>(209) 933-7340</u>

Defendant No. 3

Name Shannz Haney
Job or Title Asst. Principal
(if known)
Street Address 1141 E. Weber Ave
City and County Stockton
State and Zip Code California 95204
Telephone Number (209) 933-7340

Defendant No. 4

Name Theresa Catalano
Job or Title Counselor
(if known)
Street Address 1141 E. Weber Ave.
City and County Stockton
State and Zip Code California 95204
Telephone Number (209) 933-7340

II. Basis for Jurisdiction

Federal Courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in Federal Court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one state sues a citizen of another state or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same state as any plaintiff.

What is the basis for Federal Court jurisdiction? *(check all that apply)*

☒ Federal question

☐ Diversity of citizenship

Defendant No. 3

Name Carmen Quiroz
Job or Title Campus Security
(if known)
Street Address 1141 E. Weber Ave
City and County Stockton
State and Zip Code California 95204
Telephone Number (209) 933-7340

Defendant No. 4

Name Maryann, Sontella
Job or Title Principal
(if known)
Street Address 22 S. Van Buren St.
City and County Stockton
State and Zip Code California 95204
Telephone Number (209) 933-7365

II. Basis for Jurisdiction

Federal Courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in Federal Court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one state sues a citizen of another state or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same state as any plaintiff.

What is the basis for Federal Court jurisdiction? *(check all that apply)*

☒ Federal question

☐ Diversity of citizenship

Defendant No. 3

Name Elena Cebaleros
Job or Title Student Data Technician
(if known)
Street Address 22 S. Van Buren St.
City and County Stockton
State and Zip Code California 95204
Telephone Number (209) 933-7365

Defendant No. 4

Name Tenazza, Laurie
Job or Title Teacher
(if known)
Street Address 22 S. Van Buren St.
City and County Stockton
State and Zip Code California 95204
Telephone Number (209) 933-7365

II. Basis for Jurisdiction

Federal Courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in Federal Court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one state sues a citizen of another state or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same state as any plaintiff.

What is the basis for Federal Court jurisdiction? *(check all that apply)*

☒ Federal question

☐ Diversity of citizenship

Defendant No. 3

Name	<u>Mr. Jeff Keller</u>
Job or Title (if known)	<u>Director, Education Services</u>
Street Address	<u>701 N. Madison St.</u>
City and County	<u>Stockton</u>
State and Zip Code	<u>California 95202</u>
Telephone Number	<u>(209) 933-7000</u>

Defendant No. 4

Name	<u>Sergio E. Betancourt</u>
Job or Title (if known)	<u>Compliance Analyst</u>
Street Address	<u>701 N. Madison St</u>
City and County	<u>Stockton</u>
State and Zip Code	<u>California 95202</u>
Telephone Number	<u>(209) 933-7000</u>

II. Basis for Jurisdiction

Federal Courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in Federal Court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one state sues a citizen of another state or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same state as any plaintiff.

What is the basis for Federal Court jurisdiction? *(check all that apply)*

☒ Federal question

☐ Diversity of citizenship

Defendant No. 3

Name Mr. Mark Hagemann
Job or Title Asst. Superintendent
(if known)
Street Address 701 N. Madison St.
City and County Stockton
State and Zip Code California 95202
Telephone Number (209) 933-7000

Defendant No. 4

Name Dee Alimbini
Job or Title Director Student Support Services
(if known)
Street Address 1144 East Channel St.
City and County Stockton
State and Zip Code California 95205
Telephone Number (209) 933-7020 ext 1351

II. Basis for Jurisdiction

Federal Courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in Federal Court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one state sues a citizen of another state or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same state as any plaintiff.

What is the basis for Federal Court jurisdiction? *(check all that apply)*

☒ Federal question

☐ Diversity of citizenship

Defendant No. 3

Name

Julie Penn
Stockton Unified School Dist. (Superintendent)

Job or Title
(if known)

Street Address

701 N. Madison St.

City and County

Stockton

State and Zip Code

California 95202

Telephone Number

(209) 933-7000

Defendant No. 4

Name

Darren Sandoval SID # 1560

Job or Title
(if known)

Stockton Police Officer.

Street Address

22 E. Market St

City and County

Stockton

State and Zip Code

California 95205

Telephone Number

(209) 931-8377

II. Basis for Jurisdiction

Federal Courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in Federal Court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one state sues a citizen of another state or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same state as any plaintiff.

What is the basis for Federal Court jurisdiction? (check all that apply)

☐ Federal question

☐ Diversity of citizenship

(1) Jane Friedrich High School.

- (1) Christopher Anderson (Principal) ✓
- (2) Shanna Jarney (Asst. Principal) ✓
- (3) Julie Pagnini (Counselor) ✓
- (4) Carmen Quiroz (Campus security)
- (5) Theresa Catalano (Counselor) ✓

(2) Stockton High School:

1. Maryann Santella (Principal) ✓
2. Elena Cebaleros (Student Data Technician)
- (3) Emmett Allen (Teacher) ✓
- (4) Klopstock, Hank (Teacher)
- (5) Jackson, Susan (Teacher)
- (6) Morones, Joe (Security)
- (7) Teneza, Laurie (Teacher) Bio

(3) Stockton Unified School District:

1. Mr. Jeff Keller (Director, Education)
2. Mr. Mark Hageman (Asst. Superintendent)
- (3) Julie Penn (Superintendent)
- (4) Dee, Alimbinini, (Director Student Support Services)

(4) Stockton Police Department: officer ~~Darrell~~ ^{Darren} Sandval SID #1560

- 1) Mrs Jackson: (Juniata Hall) (1)
- 2) Rev. Haley: (2)
- 3) Counselor # Steckler CA (3)

4) Joe the Security Security
(Steckler High School)

5) (One choice school) -

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

Civil rights, discrimination, + amendment violent
no due process of the law.

B. If the Basis for Jurisdiction Is Diversity of Citizenship

1. The Plaintiff(s)

a. If the plaintiff is an individual

The plaintiff, (name) Ronny Robinson and Carolyn Hawkins Robinson, is a citizen of
the State of (name) California.

b. If the plaintiff is a corporation

The plaintiff, (name) _____, is incorporated
under the laws of the State of (name) _____,
and has its principal place of business in the State of (name) _____.

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

2. The Defendant(s)

a. If the defendant is an individual

The defendant, (name) _____, is a citizen of
the State of (name) _____. Or is a citizen of
(foreign nation) _____.

b. If the defendant is a corporation

The defendant, (name) _____, is incorporated under the laws of the State of (name) _____, and has its principal place of business in the State of (name) _____. Or is incorporated under the laws of (foreign nation) _____, and has its principal place of business in (name) _____.

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because (explain):

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

Sept 16, 2014 The incident occurred. On September 18, 2014 our daughter got arrested from Gene French High School for a crime she hadn't committed. She was held inside of Pedregon Juvenile Hall 5 nights 4 days. We never got the opportunity to prove our daughter innocent. Why? The Stockton Unified School District refuse us Due process of the law. We find they're action to be very bias, discrimination, and in violation of our civil rights. The Stockton Unified School district needs to learn that you can't treat people this way just because they have all the power. 10,000,000 is what we're seeking.

ii
unlike Carz
Robinson
Hole."

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 9-2 -, 2016

Signature of Plaintiff

Printed Name of Plaintiff

Ronny Robinson / Carolyn Harkins Robinson
Ronny Robinson / Carolyn Carolyn Harkins Robinson

CLAIM FOR DAMAGES

Case 2:16-cv-02111-KJM-GGH Document 1 Filed 09/02/16 Page 15 of 108

CITY OF STOCKTON

MAR 18 2015

Note: Claims for bodily injury or death, damage to personal property, or damage to growing crops may be filed on this form, not later than six months after the occurrence out of which the claims arose. All other claims must be filed not later than one year after the occurrence out of which the claims arose. (Refer to California Government Code sections 910.4 and 911.2)

DIRECTION: The original claim must be filed with the City of Stockton City Clerk's Office, 425 North El Dorado Street, Stockton, California 95202. Retain the yellow copy for your records.

NAME OF CLAIMANT: Renny Robinson Renny Date of Birth 7/17/62
(Last) (First) (Middle)

HOME ADDRESS/PHONE: 1625 W. Harding Wy. Stockton CA 95204
(Number/Street) (City/State/Zip Code) (Phone Number)

BUSINESS ADDRESS/ PHONE: (209) 271-6448
(Number/Street) (City/State/Zip Code) (Phone Number)

DIRECTION: Indicate to which address you wish notice sent ☒ HOME ☐ BUSINESS
WHEN DID INJURY OR DAMAGE OCCUR?

(Month/Day/Year) (Day of Week) (Time of Day)
WHERE DID INJURY OR DAMAGE OCCUR? Jane Frederick High School.
(Street address, intersecting streets, or other location)

HOW DID INJURY OR DAMAGE OCCUR? falsely arrested for a crime she hadn't committed. She spend 4 days and 5 nights inside of juvenile hall.
(Describe accident or occurrence in complete detail)

NAME OF CITY EMPLOYEE(S) INVOLVED? Mr. Christopher Anderson.

WHAT ACTION OR INACTION OF CITY EMPLOYEE(S) CAUSED YOUR INJURY OR DAMAGES? No expulsion

Hearing of any kind / No due process of the law
(No principal / parent meeting)
WHAT INJURIES OR DAMAGES DID YOU SUFFER?

Read attached documentation

TOTAL AMOUNT CLAIMED: ☒ Unlimited case--over \$25,000.00 ☐ Limited case--\$25,000.00 or less

If under \$10,000.00, please specify amount \$ _____

DIRECTION: Sign and date this Claim For Damages below. If the signer is not the claimant, indicate the relationship of the signer to the claimant.

Renny Robinson 03-18-2015 [Redacted]
(Signature) (Month/Day/Year) (Social Security Number-Optional)
Father
(Relationship of signer, if not claimant)

DIRECTION: You may attach and include with this completed form any bills for medical treatment and expenses, and any estimates or bills for personal property damage. Questions may be referred to (209) 937-8807

NOTE: PRESENTATION OF A FALSE CLAIM IS A FELONY (Refer to California Penal Code Section 72)

CLAIM FOR DAMAGES

Case 2:16-cv-02111-KJM-GGH Document 1 Filed 09/02/16 Page 16 of 108

CITY OF STOCKTON

Note: Claims for bodily injury or death, damage to personal property, or damage to growing crops may be filed on this form, not later than six months after the occurrence out of which the claims arose. All other claims must be filed not later than one year after the occurrence out of which the claims arose. (Refer to California Government Code sections 910.4 and 911.2)

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NAME OF CLAIMANT: Renny Robinson Renny Date of Birth 7/17/62
(Last) (First) (Middle)
HOME ADDRESS/PHONE: 1620 W. Harding Wy. Stockton CA 95204
(Number/Street) (City/State/Zip Code) (Phone Number)
BUSINESS ADDRESS/ PHONE: _____ (209) 271-6448
(Number/Street) (City/State/Zip Code) (Phone Number)

DIRECTION: Indicate to which address you wish notice sent ☒ HOME ☐ BUSINESS
WHEN DID INJURY OR DAMAGE OCCUR? _____
(Month/Day/Year) (Day of Week) (Time of Day)

WHERE DID INJURY OR DAMAGE OCCUR? Jane Frederick High School.
(Street address, intersecting streets, or other location)

HOW DID INJURY OR DAMAGE OCCUR? falsely arrested for a crime she hadn't committed. She spend 4 days and 5 nights upside of juvenile Hall.
(Describe accident or occurrence in complete detail)

NAME OF CITY EMPLOYEE(S) INVOLVED? Mr. Christopher Anderson.

WHAT ACTION OR INACTION OF CITY EMPLOYEE(S) CAUSED YOUR INJURY OR DAMAGES? No expulsion

Hearing of complaint / No due process of the law
(No principal's parent meeting)
WHAT INJURIES OR DAMAGES DID YOU SUFFER?

Read attached documentation.

TOTAL AMOUNT CLAIMED: ☒ Unlimited case—over \$25,000.00 ☐ Limited case—\$25,000.00 or less
If under \$10,000.00, please specify amount \$ _____

DIRECTION: Sign and date this Claim For Damages below. If the signer is not the claimant, indicate the relationship of the signer to the claimant.

Renny Robinson 03-18-2015 _____
(Signature) (Month/Day/Year) (Social Security Number-Optional)
father
(Relationship of signer, if not claimant)

DIRECTION: You may attach and include with this completed form any bills for medical treatment and expenses, and any estimates or bills for personal property damage. Questions may be referred to (209) 937-8807

NOTE: PRESENTATION OF A FALSE CLAIM IS A FELONY (Refer to California Penal Code Section 72)

SCHOOL:

Jane Frederick High School
1141 E Weber Ave
Stockton, CA 95205-4916
2099337340

Exhibit #1

DATE: 09/24/2014

CSSA FORM NO/CONTROL#: 2619

NOTICE OF SUSPENSION

TO THE PARENT OF:

Robinson, Cara L.
1921 Pock Ln #3
Stockton, CA 95206

NAME: Robinson, Cara L.

Birth Date: 03/04/1997

GENDER: Female

ETHNICITY: African American

STUDENT#: 2860353

GRADE: 12

This is to inform you that your student has been suspended from school for 3.00 day/s for violation of Student Conduct Code offense number(s). Robbery or Extortion Please see attached page to this notice for the specific offense violated and the supporting California Education Code Section.

SPECIFICALLY: Discipline incident, On 9/16/14, Cara Robinson violated Education Code 48900(e) (Attempted to commit robbery or extortion.) Cara participated in organizing a robbery of a cell phone from another female JFHS student on the way home from school. This robbery evolved in to a battery of the student as well. Several student witnesses confirm Cara met with an adult female and adult male (suspect #1-female and suspect #2-male) and who had come to JFHS to fight another JFHS female student. Student witnesses confirm Cara told suspect #1 and suspect #2, I want the I-Phone charger and told the suspects to go get it for her. While walking toward the downtown area Cara was seen making hand signals to the suspects notifying them when the I-Phone was out to be taken. Suspect #2 looked to Cara and she pointed to the victim's pocket. Cara nodding her head, (overheard saying Snatch It!) The victim became angered and suspect #1 confronted the victim. Cara crossed the street with other students and was overheard to say Bitch you better back up before I let suspect #1 beat your ass. (Suspect #1 assaulted the victim and her 2 friends.) Later, Cara was overheard bragging, saying she set this incident up. Stockton PD responded to this incident. Officer Sandoval conducted his investigation. Cara claimed she witnessed the incident but did not participate in any shape or form. This is contrary to witness statements. Officer Sandoval arrested Cara. Cara is suspended for 3 days and referred to CWA for alternative placement. Cara's father was notified of this suspension and referral to CWA. Cara and her parent can go to CWA (Room #205) and pick a referral to the County One Program.

Your student is to return to school on

Referred to One Program

CWA JFHS RA 205

You and your student are to report to the Principal/Assistant Principal's office on or before the above date for a conference regarding this suspension. During this suspension, the following conditions are in effect:

- Your student is not to be on or around any school campus in the Stockton Unified School District, nor is he/she to attend any school function on or off campus.
- A suspended pupil shall be allowed to complete all assignments and tests missed during the suspension which can be reasonably provided and, upon satisfactory completion, shall be given full credit therefore.
- The pupil or pupil's parent has the right to request a meeting with the Principal if an appeal of this action is desired. You may appeal to the Director or Lead of Educational Services when a suspension is issued by the Principal or any other instance in which the District's review of this action may be desired.

If the time or date scheduled for our conference is not convenient, please call to arrange a more convenient time

9/16 - incident happen

9/18 Cara was arrested/suspended

[Signature]
Principal or Designee

NO parent contact

exhibit #
3

NOTICE OF SUSPENSION

SPECIFICALLY: Discipline incident, on 9/16/14 Cara Robinson violated Education Code 48900(e) (Attempted to commit robbery or extortion.) Cara participated in organizing a robbery of a cell phone from another female JFHS student on the way home from school. This robbery evolved in to a battery of the student as well. Several student witnesses confirm Cara met with an adult female and adult male (suspect # 1-female and suspect # 2-male) and who had come to JFHS to fight another JFHS female student. Student witnesses confirm Cara told suspect # 1 and suspect #2. "I want the i-phone charger and told the suspects to go get it for her. While walking towards the downtown area cara was seen making hand signals to the suspects notifying them when the i-phone was out to be taken suspect #2 looked to Cara and she pointed to the victim's pocket; Cara nodding her head, (overheard saying snatch it!). The victim became

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14-34044Supplement No
0003**STOCKTON POLICE DEPARTMENT**22 E MARKET ST.
STOCKTON, CA 95202

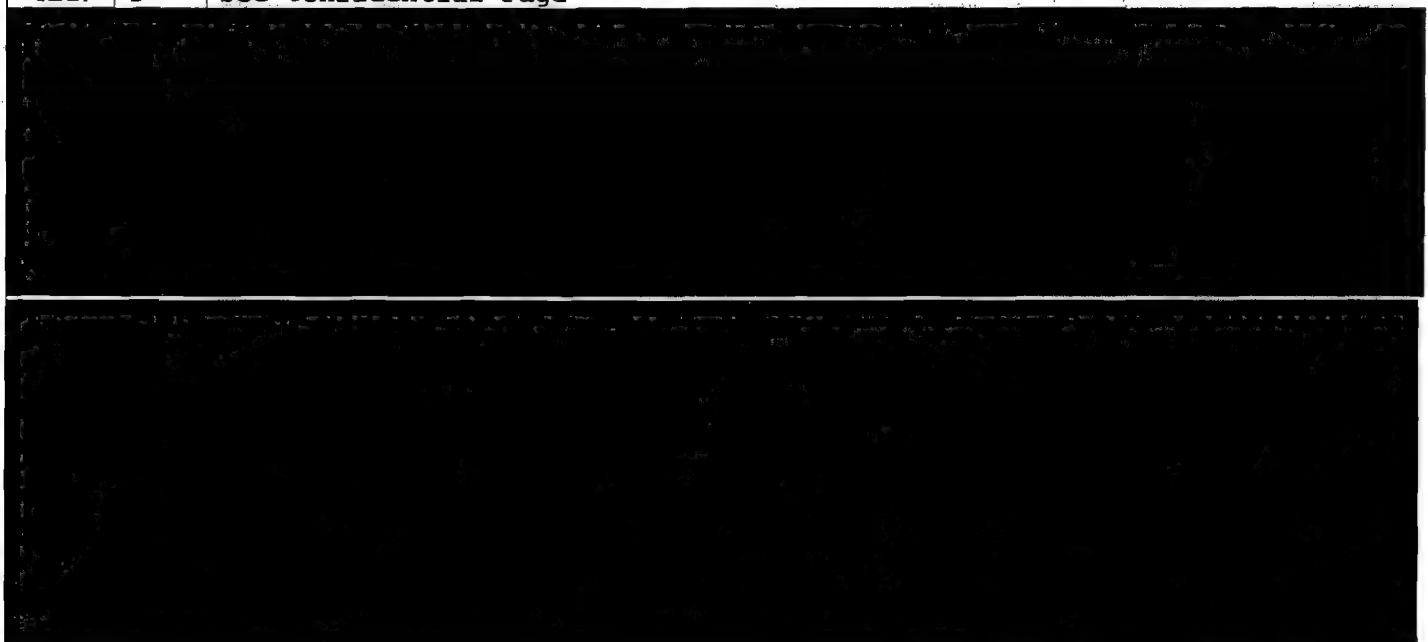
(209) 937-8495

Reported Date
09/18/2014
Rpt/Incident Typ
243
Member#/Dept ID#
SANDOVAL, DARREN SID**Administrative Information**

Agency STOCKTON POLICE DEPARTMENT		DR 14-34044	Supplement No 0003	Reported Date 09/18/2014	Reported Time 12:32	CAD Call No 142590309
Status ARREST	Rpt/Incident Typ BATTERY (PC243A)					
Location E WEBER AV/N AMERICAN ST				City Stockton	ZIP Code 95202	Rep Dist 0104
District CC	Sector CS	From Date 09/16/2014	From Time 11:09	To Date 09/16/2014	To Time 11:09	
Member#/Dept ID# 1560/SANDOVAL, DARREN SID						
Assignment FIELD SERVICE VALLEYOAK SECONDWATCH PHASE1				Entered by 1560		
Assignment FIELD SERVICE VALLEYOAK SECONDWATCH PHASE1				RMS Transfer Successful	Prop Trans Stat Successful	
Approving Officer 2427		Approval Date 09/19/2014		Approval Time 10:51:14		
# Offenses 1	Offense PC487 (C)		Description GRAND THEFT FROM PER		Complaint Type	
# Offenses 2	Offense PC182 (A) (1)		Description CONSPIRACY:COMMIT CR		Complaint Type	

Summary Narrative**Subsequent Arrest Report****ARRESTED 1: Confidential**

Involvement ARR	Invl No 1	Name See Confidential Page
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14-34044

Supplement No
0003**STOCKTON POLICE DEPARTMENT****SUSPECT 2: RIVERA, JONATHAN**

Involvement	Invl No	Type	Name				MNI	Race	Sex
SUSPECT	2	Individual	RIVERA, JONATHAN				899093	BLACK	MALE
DOB	Age	Juvenile?	Height	Weight	Hair Color	Eye Color	PRN		
10/29/1994	19	No	5'08"	160#	BROWN	BROWN	2934994		

Narrative**NOTIFICATION :**

On Thursday, September 18, 2014, at 0900 hours, I, OFC Sandoval (2A53) was dispatched to Jane Frederick HS 1141 E Weber Av. regarding Suspect contact. I arrived on scene at 0915 hours.

INVESTIGATION :

Upon arrival, I met with Principal Chris Anderson, who advised that he was talking with a witness to the whole incident, from the beginning on Tuesday morning. Principal Anderson had (W1) [REDACTED] in his office. [REDACTED] was hand writing her statement for Principal Anderson. See attached for further details. (W1) [REDACTED] stated the following in summary:

STATEMENT OF (W1) [REDACTED]

14-34044

Supplement No
0003

STOCKTON POLICE DEPARTMENT

Narrative

(End of Statement)

INVESTIGATION (continued):

STATEMENT OF (Arr) Cara R. :

Cara R. denied knowing who (V1) [REDACTED] name. She only knew her from passing during their 4th period class. Cara R. stated she has Algebra next door to [REDACTED] Art class. Cara R. advised she knows (S2) Jonathan Rivera and (S3) [REDACTED] but does not really know their names. She explained that they have mutual friends from the streets. She refers to Rivera as "baby daddy" because she knows he and (S3) [REDACTED] have a son together.

However, Cara R. described (S2) Rivera as follows:

Mixed race B & H/M/A 18- 21 Yrs. 5'7"/130 (skinny) Lt complexion, Clean shaven. Curly hair.

Cara R. stated she saw [REDACTED] and Rivera at the school, JFHS, because [REDACTED] wanted to fight with (Sub1) [REDACTED] who attends the PM classes. The security guard came so [REDACTED] and [REDACTED] left.

Cara R. stated she asked [REDACTED] to bring her charger to school, because she (Cara R.) hasn't charged her cell phone in three (3) days. [REDACTED] didn't respond, but then gave her a weird look. Cara R. stated that [REDACTED] was "flashing" her cell phone making people jealous, so that was why [REDACTED] and Rivera took her cell phone.

Cara R. denied have any type of conversation with [REDACTED] or Rivera to get [REDACTED] cell phone.

(End of Statement)

INVESTIGATION (continued):

ATTACHMENTS:

Report Officer
1560/SANDOVAL, DARREN SID

Printed At
09/19/2014 11:01

Page 3 of 5

14-34044

Supplement No
0003

STOCKTON POLICE DEPARTMENT

Narrative

(End of Statement)

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ATTACHMENTS:

Report Officer
1560/SANDOVAL, DARREN SID

Printed At
09/19/2014 11:01

Page 3 of 5

14-34044

Supplement No
0003**STOCKTON POLICE DEPARTMENT****SUSPECT 2: RIVERA, JONATHAN**

Involvement	Invl No	Type	Name				MNI	Race	Sex
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DOB	Age	Juvenile?	Height	Weight	Hair Color	Eye Color	PRN		
10/29/1994	19	No	5'08"	160#	BROWN	BROWN	2934994		

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STATEMENT OF (W1) [REDACTED]

14-34044

Supplement No
0003

STOCKTON POLICE DEPARTMENT

Narrative

[REDACTED]

EVIDENCE:

[REDACTED]

14-34044

Supplement No
0003

STOCKTON POLICE DEPARTMENT

Narrative

[REDACTED]

EVIDENCE:

[REDACTED]

To Whom It May Concern

On 9-18-2014 Mr. Anderson called, the Stockton Police Dept. to have my daughter. Cara Lynn Robinson, arrested for several crimes she hadn't committed such as (attempted to commit robbery or extortion). My daughter was held inside of the Stockton Peterson Juvenile Hall for four days and five days for a crime she hadn't committed.

On 09-21-2014 the juvenile court prosecutor, released my daughter stating "there was no evidence at all to petition the court." And, that Cara Lynn Robinson should be released immediately. On -24-2014 upon returning my daughter back to Jane Fredrick High School, Mr. Anderson stated, stated, "If a student leaves his school in handcuffs. He or she can no longer attend his school." I find his statement to be true. Why? Mr. Anderson informed my wife and daughter that Cara Lynn Robinson was still suspended/ expelled.

My daughter hasn't gotten a fair hearing for example, 1. No parent or principal conference outside the one we had with Julie Penn the Stockton Unified School District Superintendent. And that meeting was held only because, I asked my union representative/ or family consult to help me with that setting up that particular appointment. Not because Mr. Anderson wanted one but, me and my family needed some answer. NO EXCLUSION HEARING of anykind. NO DUE PROCESSES OF THE LAW on the guilty or innocent our child.

In the above meeting Mrs. Julie Penn the Stockton Unified School District Superintendent, asked Mr. Anderson , " if he had called the Stockton Police Department" mr Anderson , clearly stated, "NO" and that, the Stockton Police Department was conducting an ongoing investigation. He had no idea why? The Stockton Police arrived to his school, to have my daughter falsely arrested for a crime she hadn't committed.

But, on the actual police report once we obtained after a three month wait. It stated, that the Stockton Police Dept. was dispatched and not doing an ongoing investigation on the incident that took place on 09-16-2014. Also, upon arrival of the Stockton police in fifteen minutes the Stockton police officer met with Mr. Anderson who was waiting outside for they're arrival.

Please Read Attached Police report:

#14-34044.

The Stockton Unified School District continued to refuse our request. As concerned parents to Cara Lynn Robinson, the Stockton Unified School district, we have discovered numerous of illegal actions that out of are control due to the UNETHICAL PRACTICES, DECEPTION BEHAVIOR, IMMORAL, and the open PREJUDICE on unfavorable opinion on feeling formed beforehand or without knowledge, thought , or reason, unfair, discrimination the treatment or against, a person or thing based on the groups, class, or category to which that person or thing belongs, rather than or individuals merit. And, most importantly they all agreed that our daughter was guilty and that's it. NO DUE PROCESS OF THE LAW HEARING not necessary.

We like to conclude by saying? 1. We have a right and responsibilities to support our child such as any responsible parent. We never got DUE PROCESS OF THE LAW simply states " student facing significant disciplinary action, and form of school exclusion we are entitled to numerous procedures to determine, if our daughter at fault.

2. All administrative regulation and in accordance with the law.

3. As god is our witness we never got a parent/ guardian/ teacher/ principal conference that is required to be discuss these issues' that interfered with our daughter learning.

4. We understand Expulsion is a very last resort, but only after corrective measure or actions have been tried and foul Mr. Anderson refused to give us that required fair opportunity.

5. If our daughter committed an expellable offense. Why? We didn't get the opportunity for an extension of suspension when a student has committed an expellable offense.

6. School are supposed to attempt to work with the students and parents/guardian to help the student improve his or her behavior and stop inappropriate or disruptive behavior that caused some serious interferes with the rights of all students learning.

Sin: Ronny Robinson/ Carolyn Robinson

On 09-24-2014.



Stockton Unified School District Uniform Complaint Form

(Last Name) <u>Robinson</u>	(First Name/MI) <u>Bunny</u>
(Street/Apt #) <u>620 W. Harding Wy.</u>	
(City) <u>Stockton</u>	(State) <u>CA</u> (ZIP) <u>95204</u>
(Home Phone) <u>(209) 271-6448</u> (Message/Work Phone) () <u>Stagg High School</u>	
Date of Event Leading to Complaint: <u>09-18-14</u>	
My Complaint is Against: (Name of Person(s) or Agency/Unit) <u>Mr. Christopher Anderson</u>	
(Please check the box next to the program you are complaining about)	
<input type="checkbox"/> Adult Basic Education	<input type="checkbox"/> Consolidated Categorical Aid Programs
<input type="checkbox"/> Career Technical Education	<input type="checkbox"/> Child Care and Development Programs
<input type="checkbox"/> Child Nutrition Programs	<input type="checkbox"/> Special Education Programs
<input checked="" type="checkbox"/> Unlawful Discrimination	<input type="checkbox"/> Other (please specify) _____
(Please explain the nature of your complaint. Please print or type. Please give detailed information such as dates, times, places, types of complaint and if there were any witnesses. Use the reverse of this form and additional sheets if necessary.)	
<p>on 9-18-14. Mr. Anderson called, the Stockton Police Dept. to have my daughter. Cara Lynn Robinson, arrested for several crimes she hadn't committed. Such as: (attempted to commit robbery or extortion).</p> <p>My daughter was held inside of the Stockton Peterson Juvenile Hall. for (4) nights, and (5) days. (for a crime she, hadn't committed).</p> <p>on 09-21-14. The juvenile court prosecutor. Released my daughter stating. "There was no evidence, at all to put her in the court." And, that. Cara Lynn Robinson, should be released immediately.</p> <p>on 09-24-14. Upon returning my daughter back to Jane Fredricks High School. Mr. Anderson. Stated, "If a student leaves "his" school up handcuffs. He or she can no longer attend "his" school. I find his statement to be true. Why?" Mr. Anderson. Informed my wife and daughter. That cara Lynn</p>	

Robinson. Was still suspended / expelled.

My daughter haven't gotten a fair hearing. for example: No parent or principal conference. outside the one we had with Julie Penn. And that meeting was held, only because, I asked my union representative to help me with that particular appointment. "Not because, Mr. Anderson, wanted me. But, me and my family needed some answer. No expulsion hearing or anything. No due process of the law. On the guilt and innocence of my child."

In that above meeting, Mrs. Julie Penn. asked Mr. Anderson, if he had called the Stockton Police Dept. Mr. Anderson, state clearly "No" and that the Stockton Police Dept. was conducting an ongoing investigation. He had no idea why? The Stockton Police arrived to his school.

Mr. Anderson, the principal of Stockton High School. "Tried to all of us." I have the actual police report finally.

Please read: Police report attached, (1). It plainly states, "Mr. Anderson did called the Stockton Police Dept. to have my daughter falsely arrested, for a crime she had not committed."

It also, states that the Stockton Police Dept. was dispatched. And, not during an ongoing investigation on the incident, that took place on -09-16-14. also, upon arrival of the Stockton police in fifteen minutes.

The Stockton police officer met with Mr. Anderson who was waiting outside for their arrival.

Please Read: Report →
attached.

(Signature of Complainant):

Rony Rab...

(Date):

(Received By):

(Date):

Jane Frederick High School Christopher Anderson, Principal 1141 E Weber Ave Stockton, CA 95205-4916		Stockton Unified School District 2013-2014		Student Name: Robinson, Cara L.		
				Perm ID: 2860353	Grade: 11	Home Room:

Grade Detail									
Period	Course ID	Course Title	4th Qtr	2nd Sem	Teacher	Cond	WkHbt	ALL ABS	ALL TDY
1	212000	Eng 1-2	C-	C-	Sudderth, B.			8	6
2	262000	Art 1-2	B+	B+	Walsh, R.			3	0
3	212200	Eng 5-6	D	D	Leyva, S.			5	0
4	229200	EE Math Gr 11	B-	B-	Shawver, L.	N	S	3	6

GPA	TOT GPA RP 2.25					
Grade Legend	A+ = Outstanding	A = Outstanding	A- = Outstanding	B+ = Above Average	B = Above Average	B- = Above Average
	C+ = Average	C = Average	C- = Average	D+ = Below Average	D = Below Average	D- = Below Average
	F = Failure	P = Pass	I = Incomplete	W = Withdraw	NC = No Credit	NM = No Mark
	NR = Not Reported	CR = Credit				
Cond Legend	U = Unsatisfactory	O = Outstanding	S = Satisfactory	N = Need Improvement		
WkHbts Legend	U = Unsatisfactory	O = Outstanding	S = Satisfactory	N = Need Improvement		

Jane Frederick High School
 2nd Semester Report Card 2013/2014

See Reverse Side For Opening Instructions

Jane Frederick High School
 1141 E Weber Ave
 Stockton, CA 95205-4916

PRESORTED
 FIRST CLASS MAIL
 US POSTAGE PAID
 Stockton, CA
 PERMIT NO. 402


RETURN SERVICE REQUESTED

Carolyn/Ronny Robinson
 RE: Robinson, Cara L.
 620 W Harding Wy
 Stockton, CA 95204

Student Name Robinson, Cara L.				Stockton Unified School District Jane Frederick High School		Jane Frederick High School 1141 E Weber Ave Stockton, CA 95205-4916	
Perm ID 2860353	State ID 2130612805	Grd 12	Gen F				
Date Of Birth 03/04/1997		Phone 209-933-7496		Enter Date 08/22/2002	Leave Date 09/23/2014	Phone 209-933-7340	Fax
Home Address 620 W Harding Wy Stockton, CA 95206				Class of 2015		Counselor Pagnini, Julie	

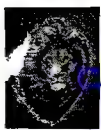
Crs ID	Course Title	Mark	Cred Att/Cmp	Crs ID	Course Title	Mark	Cred Att/Cmp	Graduation Requirements - Credit Summary				
Stagg High School				Edison High School				Subject Area		Req'd	Compl	Needed
Yr. 2011	Month: 12	Grade: 09		Yr. 2013	Month: 3	Grade: 10		English	40.00	27.50	12.50	
2414	English 1-2	D-	5.00 / 5.00	2415	English 3-4	D+	5.00 / 5.00	World History	10.00	10.00		
3690	Algebra 1-2	F	5.00 / 0.00	2870	Spanish 1-2	F	5.00 / 0.00	US History	10.00	0.00	10.00	
3905	Exit Exam Math 9	D-	5.00 / 5.00	5692	World History 1-2	D-	5.00 / 5.00	Amer Govt	5.00	0.00	5.00	
5180	Physical Education 1-2	C+	5.00 / 5.00	n9034	Foundational Writing 1-2	F	5.00 / 0.00	Economics	5.00	0.00	5.00	
5380	Integrated Physical Scienc	D-	5.00 / 5.00	Cred Att: 20.00	Cred Cmp: 10.00	GPA: 0.50		Mathematics	20.00	10.00	10.00	
5716	High School Succes 1-2	D-	5.00 / 5.00	Edison High School				Biological Science	10.00	5.00	5.00	
Cred Att: 30.00	Cred Cmp: 25.00	GPA: 1.00		Yr. 2013	Month: 5	Grade: 10		Physical Ed	20.00	5.00	15.00	
Stagg High School				2415	English 3-4	C-	5.00 / 5.00	Wld Lang/V&P Arts/CTE	10.00	10.00		
Yr. 2012	Month: 5	Grade: 09		2870	Spanish 1-2	D-	5.00 / 5.00	Physical Science	10.00	10.00		
2414	English 1-2	F	5.00 / 0.00	5692	World History 1-2	D+	5.00 / 5.00	Electives	70.00	25.00	45.00	
3690	Algebra 1-2	F	5.00 / 0.00	n9034	Foundational Writing 1-2	F	5.00 / 0.00	TOTALS	210.00	102.50	107.50	
3905	Exit Exam Math 9	F	5.00 / 0.00	Cred Att: 20.00	Cred Cmp: 15.00	GPA: 1.00		Graduation Requirements - Test History				
5180	Physical Education 1-2	F	5.00 / 0.00	Jane Frederick High School				Test Name	Admin Dt	Result	Perf Lvl	Score
5380	Integrated Physical Scienc	F	5.00 / 0.00	Yr. 2013	Month: 12	Grade: 11		CAHSEE	03/12/2013	Passed		366
5716	High School Succes 1-2	F	5.00 / 0.00	212200	English 5-6	B+	2.50 / 2.50	^ Edison High School				
Cred Att: 30.00	Cred Cmp: 0.00	GPA: 0.00		222000	Algebra 1-2	D-	2.50 / 2.50	CAHSEM	03/13/2013	Passed		351
Edison High School				227200	Algebra Support 1-2	D	2.50 / 2.50	^ Edison High School				
Yr. 2012	Month: 10	Grade: 10		412300	Law and Society 1-2	B-	2.50 / 2.50					
1434	Computer Ed 1 (business)	B	5.00 / 5.00	Cred Att: 10.00	Cred Cmp: 10.00	GPA: 2.00						
3690	Algebra 1-2	F	5.00 / 0.00	Jane Frederick High School								
5380	Integrated Physical Scienc	D+	5.00 / 5.00	Yr. 2014	Month: 3	Grade: 11						
5390	Biology 1-2	D	5.00 / 5.00	212000	English 1-2	C-	2.50 / 2.50					
Cred Att: 20.00	Cred Cmp: 15.00	GPA: 1.25		212200	English 5-6	D+	2.50 / 2.50					
Edison High School				222000	Algebra 1-2	NM	2.50 / 0.00					
Yr. 2012	Month: 11	Grade: 10		229200	Exit Exam Math Grade 11	C-	2.50 / 2.50					
7075	Health	C+	2.50 / 2.50	262000	Art 1-2	D+	2.50 / 2.50					
Cred Att: 2.50	Cred Cmp: 2.50	GPA: 2.00		Cred Att: 10.00	Cred Cmp: 10.00	GPA: 1.50						
Edison High School				Jane Frederick High School								
Yr. 2012	Month: 12	Grade: 10		Yr. 2014	Month: 6	Grade: 11						
3690	Algebra 1-2	F	5.00 / 0.00	212000	English 1-2	C-	2.50 / 2.50					
5380	Integrated Physical Scienc	D	5.00 / 5.00	212200	English 5-6	D	2.50 / 2.50					
5390	Biology 1-2	F	5.00 / 0.00	229200	Exit Exam Math Grade 11	B-	2.50 / 2.50					
7030	Driver Education	F	2.50 / 0.00	262000	Art 1-2	B+	2.50 / 2.50					
Cred Att: 17.50	Cred Cmp: 5.00	GPA: 0.29		Cred Att: 10.00	Cred Cmp: 10.00	GPA: 2.25						

Transcript is unofficial unless signed by a school official

GPA SUMMARY Total GPA CSU GPA TOT GPA CH 0.90 CSU GPA CH 1.11 UWEG GPA CH 0.90 CAL GRANT CH 1.11		NOTES 08-14-12 Entered Edison HS 10-07-13 Trnsfd from Edison HS 05-20-14 Records sent to: Jane Frederick HS Referred to CWA 9-23-2014		
Enter Date 08/22/2002	Ranked By Total GPA	Enter Date 08/22/2002	Leave Date 09/23/2014	
Class Rank	Graduation Date	Class Rank	Graduation Date	Class of 2015

Signature

09/24/2015



Jane Frederick High School

Year: 2014-2015

Case 2:16-cv-02112-KIM-GSH Document 1 Filed 09/07/16 Page 33 of 108

Period Student Attendance Profile

Report: ATP-201

Student Information

Student Name (Robinson, Cara L.)	Perm ID 2860353	Gender F	Grade 12	Home Address 620 W Harding Wy Stockton, CA 95206
Last Name Goes By	Nick Name	Birth Date 03/04/1997		
Phone 209-933-7496	Home Language English	Resolved African American	Enter Date 08/12/2014	Leave Date 09/23/2014

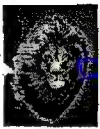
Custodial Information

Mother Robinson, Carolyn	Phone Type Home	Phone 209-933-7496	Extension Moms Phone
<input checked="" type="checkbox"/> Contact Allowed	<input checked="" type="checkbox"/> Has Custody	<input checked="" type="checkbox"/> Lives With	<input checked="" type="checkbox"/> Ed. Rights
<input checked="" type="checkbox"/> Mailings Allowed			
Father Robinson, Ronny	Phone Type Home	Phone 209-933-7496	Extension Moms Phone
<input checked="" type="checkbox"/> Contact Allowed	<input checked="" type="checkbox"/> Has Custody	<input checked="" type="checkbox"/> Lives With	<input checked="" type="checkbox"/> Ed. Rights
<input checked="" type="checkbox"/> Mailings Allowed			

Attendance By Period

Date	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
08/12/2014 (B)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/13/2014 (C)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/14/2014 (D)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/15/2014 (E)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/18/2014 (F)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/19/2014 (G)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/20/2014 (H)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/21/2014 (I)	UNX	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/22/2014 (J)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/25/2014 (A)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/26/2014 (B)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/27/2014 (C)	PRE	PRE	UNX	UNX	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/28/2014 (D)	UNX	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/29/2014 (E)	PRE	UNX	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
→ 09/02/2014 (G)	UNX	UNX	UNX	UNX	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/03/2014 (H)	UNX	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/04/2014 (I)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/05/2014 (J)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/08/2014 (A)	UNX	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/09/2014 (B)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/10/2014 (C)	UNX	TOY	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/11/2014 (D)	UNX	UNX	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/12/2014 (E)	PRE	PRE	PRE	UNX	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/15/2014 (F)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/16/2014 (G)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/17/2014 (H)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/18/2014 (I)	PRE	PRE	PRE	UNX	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
→ 09/19/2014 (J)	SUS	SUS	SUS	SUS	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
→ 09/22/2014 (A)	SUS	SUS	SUS	SUS	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/23/2014 (B)	UNX	UNX	UNX	UNX	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
Total	30	30	30	30	0	0	0	0	0	0	0	0	0	0	0

(Robinson, Cara L.)



Jane Frederick High School

Period Student Attendance Profile

Year: 2014-2015
Report: ATP201

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(Robinson, Cara L.)

Student Information

Student Name (Robinson, Cara L.)	Perm ID 2860353	Gender F	Grade 12	Home Address 620 W Harding Wy Stockton, CA 95206
Last Name Goes By	Nick Name	Birth Date 03/04/1997		
Phone 209-933-7496	Home Language English	Resolved African American	Enter Date 08/12/2014	Leave Date 09/23/2014

Custodial Information

Mother Robinson, Carolyn	Phone Type Home	Phone 209-933-7496	Extension Moms Phone
<input checked="" type="checkbox"/> Contact Allowed	<input checked="" type="checkbox"/> Has Custody	<input checked="" type="checkbox"/> Lives With	<input checked="" type="checkbox"/> Ed. Rights
<input checked="" type="checkbox"/> Mailings Allowed			
Father Robinson, Ronny	Phone Type Home	Phone 209-933-7496	Extension Moms Phone
<input checked="" type="checkbox"/> Contact Allowed	<input checked="" type="checkbox"/> Has Custody	<input checked="" type="checkbox"/> Lives With	<input checked="" type="checkbox"/> Ed. Rights
<input checked="" type="checkbox"/> Mailings Allowed			

Attendance By Period

Date	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
------	---	---	---	---	---	---	---	---	---	----	----	----	----	----	----

Period Reason Code Type Totals

POS = 90 EXC = 0 UNV = 0 UNE = 28 TDY = 0 ACT = 0
TAR = 2

Period Reason Code Totals

PRE = 90 ISN = 0 UNV = 0 UNX = 20 PER = 0 ACT = 0
RUN = 0 ISS = 0 EXC = 0 JUS = 0 TST = 0 MED = 0
FNR = 0 HDL = 0 FTP = 0 TDY = 1 ISA = 0 NSS = 0
ILL = 0 OTH = 0 ADM = 0 ESU = 0 SUS = 8 SAT = 0
30T = 1 CUT = 0

Reason Code Legend

PRE = Present	ISN = Ind Study	UNV = Unverified	UNX = Unexcused	PER = Permitted	ACT = Activity
RUN = Runaway	ISS = InSch Sus	EXC = Excused	JUS = Justified	TST = Testing	MED = Med Dr Excuse
FNR = Funeral	HDL = Headlice	FTP = Field Trip	TDY = Tardy	ISA = Ind Study A	NSS = NoShow ISS
ILL = Illness	OTH = Other	ADM = Admin Counselo	ESU = Expulsion	SUS = Suspended	SAT = Sat School
30T = 30 Min Tdy	CUT = Truant	N/S = Not Scheduled			



Stockton Unified School District

CONFIDENTIAL

February 5, 2015

Ronny Robinson
620 W Harding Way
Stockton, CA 95204

RE: Complaint, No. 15.084, Board Policy 1312.1, Community Relations, Complaints Concerning District Employees

Dear Mr. Robinson:

We received your appeal of the referenced complaint resolution provided to you by Jeff Keller, Director, Education Services. Your appeal is being handled under Board Policy 1312.1, Community Relations, Complaints Concerning District Employees and the related Administrative Regulation.

Your appeal is assigned to Mark Hagemann, Assistant Superintendent. Mr. Hagemann has designated our office to handle and coordinate the appeal. We will treat your complaint confidentially and request that you also refrain from discussing the complaint with others except our staff, or your advisors.

Board Policy prohibits retaliation in any form for the filing of a complaint, the reporting of instances of discrimination or participation in complaint procedures. Such participation shall not in any way affect the status, grades or work assignment of the complainant.

Thank you.

Sincerely,



Sergio E. Betancourt
Compliance Analyst

Copy: Mark Hagemann, Assistant Superintendent, Education Services

Inmaculada Romero

Subject: FW: Case No. 15.084 - Mtg. w/Dr. Hagemann

From: Inmaculada Romero
Sent: Thursday, February 26, 2015 12:48 PM
To: Ronny Robinson
Cc: Sergio Betancourt
Subject: Case No. 15.084 - Mtg. w/Dr. Hagemann

Mr. Robinson,

Dr. Hagemann is available to meet with you on Thursday, March 12th, at 3:00 p.m.

Please e-mail me back to confirm this appointment.

Sincerely,

Inmaculada Romero
Executive Assistant II
Educational Services K-12
Stockton Unified School District
(209) 933-7115 Ext. 2740
Fax: (209) 933-7036

P.S. I just left you a message on your answering machine.



Stockton Unified School District

EDUCATIONAL SERVICES K-12

701 North Madison Street
Stockton, CA 95202
(209) 933-7115, Ext. 2740
Fax (209) 933-7036

BOARD OF
EDUCATION
Gloria Allen
Andrea Burrise
Kathleen Garcia
Colleen Keenan
Maria Mendez
Angela Phillips
Steve Smith

Ms. Julie Penn, Interim Superintendent

CONFIDENTIAL

March 2, 2015

Mr. Ronny Robinson
620 W. Harding Way
Stockton, CA 95204

RE: Case Number No. 15.084

Dear Mr. Robinson:

On February 26th, I attempted to contact you by phone, 209-271-6448, but you were unavailable thus I left you a message. I also e-mailed you the same day (see attached). On February 27th, I left you another message; however, I have not heard from you.

At your request, we have scheduled a meeting for you to meet with Dr. Mark Hagemann, Assistant Superintendent, Educational Services, and Mr. Sergio Betancourt, Compliance Analyst, at the District Office on **Thursday, March 12, 2015, at 3:00 pm**. Please ask for me when you arrive at the reception desk and I will escort you to the meeting. The District Office is located at 701 North Madison Street, Stockton, CA 95202.

If this appointment is not convenient for you, please contact me and I will reschedule it for you.

Sincerely,

A handwritten signature in cursive script that reads "Irma Romero".

Irma Romero
Executive Assistant
Educational Services K-12

Cc: Mr. Sergio E. Betancourt, Compliance Analyst, Compliance Services
Dr. Mark Hagemann, Assistant Superintendent, Education Services



Stockton Unified School District

EDUCATIONAL SERVICES K-12

701 North Madison Street
Stockton, CA 95202
(209) 933-7115, Ext. 2740
Fax (209) 933-7036

BOARD OF EDUCATION

Gloria Allen
Andrea Burrise
Kathleen Garcia
Colleen Keenan
Maria Mendez
Angela Phillips
Steve Smith

Ms. Julie Penn, Interim Superintendent

CONFIDENTIAL

July 27, 2015

Mr. Ronny Robinson
620 W. Harding Way
Stockton, CA 95204

**RE: Appeal of Complaint, No. 15.084, Board Policy 1312.1
Community Relations, Complaints Concerning District Employees**

Dear Mr. Robinson:

Please accept our apologies for the delay in providing you with our final report concerning your appeal of the complaint against Jane Frederick High School (JFHS) Principal Christopher Anderson, previously handled by Director Jeff Keller.

We met on March 12, 2015 in my office and discussed your concerns in your appeal. Your appeal stated the following as your main issues:

1. Though other students/witnesses were interviewed, daughter Cara was not concerning the fight at the RT center and the theft of a cell phone and charger.
2. Cara was arrested based on information provided by the school principal or at the behest of the principal.
3. As a result of the arrest, Cara spent 5 days and 4 nights at Juvenile Hall before a prosecutor determined that the case would not be prosecuted and that she was thus innocent.

1. Incident

On September 16, 2014 three JFHS students were involved in a fight near the campus. One student had her Apple iPhone stolen. Pursuant to Board Policy 5142 "... (Staff are responsible for the conduct and safety of students from the time they come under school supervision until they leave school supervision, whether on school premises or not.)" Principal Chris Anderson investigated the incident and determined that Cara Robinson was implicated in the incident. After obtaining student/witness statements, there was a sizable group that witnessed the incident and also included some cell phone video. Witness statements stated that the incident involved at least an assault and battery and theft/larceny that are criminal matters. Mr. Anderson contacted District Police Department on September 18, 2014. The incident was outside the SUSD Police Department jurisdiction so the request was forwarded to Stockton Police Department. An officer, Darren Sandoval, arrived at the campus, participated in interviewing witnesses and then

interviewed Cara Robinson. (Mr. Anderson stayed with Cara during the Officer's interview.)

→ Officer Sandoval arrested and took her off the campus in handcuffs.

Mr. Anderson then contacted Cara's father, Ronny Robinson. This is consistent with Board Policy on contacting parents after an arrest. Mr. Anderson also stated that Cara had violated the SARB contract, which is attached to this letter, and combined with the incident led him to conclude that Cara needed to be referred to CWA for eventual referral to the County One Program.

The following week, Cara was brought back to JFHS by her mother. Mr. Anderson met with them and explained that Cara was being referred to the County One Program. According to the complaint, Mr. Anderson said that she could not attend JFHS because she was led out in handcuffs. Mr. Anderson recalls that Ms. Robinson asked the question that if a student is taken away in handcuffs means that they are no longer welcomed back. Mr. Anderson recalls that he explained that that fact is part of what he considered in making his decision. It was not the controlling incident.

In addition to meeting with Cara and her mother, the incident was presented and discussed with Interim Superintendent Julie Penn; and, on appeal, with Assistant Superintendent Mark Hagemann. Others considering the situation included Director Jeff Keller and Compliance Services Analyst Sergio Betancourt.

The evidence suggests that Cara's version of the incident was heard by many administrators.

2. Arrest

Cara was arrested by Stockton Police Department Officer Darren Sandoval. Officer Sandoval was investigating the incident. The school had information concerning the RT fight and contacted District Police. SUSD Police Department, in turn, contacted Stockton Police Department because the incident occurred outside District campus or property. Stockton Police Department Officer Sandoval questioned Cara at the school and he made the determination that there was probable cause to arrest her. A school principal is not in a controlling position over a law enforcement officer, especially a city police officer.

There is no evidence that Principal Anderson caused Stockton Police Department Officer to make an arrest.

3. Release From Juvenile Hall

We understand that a San Joaquin County District Attorney representative determined that the evidence was insufficient to generate a conviction or determined that evidence didn't support the arrest or for some other reason, caused Cara to be released from Juvenile Hall. We understand there will no further prosecution.

The District has no role in the juvenile criminal justice system resulting in involuntary detention. However, we are pleased to hear that Cara was released with no outstanding issues.

Cara may have been at the wrong place at the wrong time, resulting in unfortunate circumstances. However, we didn't find that Principal Anderson acted in a manner inconsistent with his responsibilities as the school principal that includes insuring the safety of all students.

But incidents occurring outside the school that result in city law enforcement action, are not with the scope and authority of the school principal.

Case 2:16-cv-02111-KJM-GGH Document 1 Filed 09/02/16 Page 40 of 108

Cara is a bright and talented young lady that, we trust, will learn from this unfortunate incident. Please let me know if I might be able to help Cara with her future education aspirations.

Board Policy prohibits retaliation in any form for the filing of a complaint, the reporting of instances of discrimination or participation in complaint procedures. Such participation shall not in any way affect the status, grades or work assignment of the complainant.

Thank you.

Sincerely,



Mark Hagemann
Assistant Superintendent, Education Services K-12

cc: Mr. Sergio Betancourt, Compliance Analyst, Compliance Services

Attachment: SARB Contract



San Joaquin County Office of Education
Community School/Day Center Referral
2014-2015

one:

Fax Referral to: (209) 468-9051 Email
For Appointment Call Ernest Aispuro (209) 468-9026 eaispuro@sjcoe.net
Special Ed. Call Hector Calderon (209) 468-5949 hcalderon@sjcoe.net
K-6/Court Placement Call Teresa Backovich (209) 468-9048 tbackovich@sjcoe.net

SSIS ID# 2130612805 ☐ Male
Student's Legal Name: Robinson, Cara L. ☒ Female Age: 17 Date of Birth: 3/4/97 Current Grade: 12
Home Address: 1921 Pok Ln. #3 Apt. #3 City: Stockton Zip: 95206
District of Residence: SUSD Last School of Attendance: Jane Fredrick Exit Date: _____
☐ Threat ☐ Legal Guardian ☐ Caregiver Carolyn/Ronny Robinson Email: _____
Home Ph: _____ Cell Ph: 209-227-6140

Is Student/Foster Youth or Homeless? If yes, please contact F/Y Services 209-468-9104 or Homeless Services 209-468-4986

E.C. 1981	E.C. 1981	Student receives Special Ed services: <input type="checkbox"/>
Parent Request (h) *Parent must sign Below Reasons: _____ Is student currently Pending Expulsion Y/N? _____	Probation WIC 602 (C-1) Probation (C-2) Social Service WIC 300 (C-1)	If this student has/had an IEP, a new IEP must be scheduled by the District of Residence, with a SJCOE Representative in attendance or a 30 day transfer/placement issued prior to enrollment. If an Exit IEP was held, please provide date: _____
Violation SARF (b) 1. Please attach copy of contract 2. Current attendance record Expulsion (a) Must attach the following: 1. District Board Decision 2. Finding of Facts 3. Board Recommendations		

Based upon review of school records, it is believed that the above named minor could benefit from the educational services available in the San Joaquin County Community School/Day Center Program, and is herewith referred to the San Joaquin County Community School/Day Center Program pursuant to Education Code 1981 (a, b). It is also believed that being under the immediate supervision of a Probation Officer, Per WIC 654, will be beneficial to not only the student, but also as support to the family.

CWA Representative Signature: X Dee Alumbus Date: 9/18/14

Please Print Name of Parent / Legal Guardian / Caregiver: _____

* Signature: X _____ Date: _____

Signer is (please check appropriate box) ☐ Parent ☐ Legal Guardian (court documents required) ☐ Caregiver (affidavit required)

Based upon review of school records, it is believed that the above minor could benefit from the educational services available in the San Joaquin County Community School/Day Center Program, and is herewith referred to the San Joaquin County Community School/Day Center Program pursuant to Education Code 1981 (C).

P.O./S.W. Name: (print) _____ Signature: X _____ Date: _____

Phone: _____ Fax: _____ County: _____

Please list the name of person holding Ed. Rights for Student: _____ Relationship to student: _____

Important: The following documents are required for an appointment: copy of student's immunization record, proof of current TDAP, proof of birth date and transcript.

Returning Student? ☐ No ☐ Yes ID# _____
Admin. Meeting Date: _____ Re-enroll: _____ Approved: _____ Special Instructions: _____ Referred back: _____
CALPADS: Sp. Ed. Yes No \$04 Plan Yes No
EO EL IFEP RFEP TBD

SCHOOL PLACEMENT <input type="checkbox"/> Jane Frederick High School <input checked="" type="checkbox"/> San Joaquin County Operated Schools <input type="checkbox"/> Other	NOTES: Violation of SARB
---	---------------------------------

SERVICES: RSP _____ SDC _____ Current 504 _____	STOCKTON UNIFIED SCHOOL DISTRICT STUDENT SUPPORT SERVICES/CHILD WELFARE AND ATTENDANCE School Attendance Review Board Contract	TRUANCY <input checked="" type="checkbox"/> BEHAVIOR _____ OTHER _____
--	---	---

Student's name Cara Robinson	Grade 12	Credits(HS)	Attendance Area School/Referring School SUSD Jane Frederick
Address 1921 Pock Lane #3	Date of Birth 3/8/87	Home and Cell Telephone Number 209-227-5140	
Parent's/ Guardian's Name Carolyn Robinson	Parent Identification	PERM ID# 2860353	CSIS # 2130612805

Education Code 48263 School Attendance Review Board Referral (SARB)

If any minor pupil in any district of a county is a habitual truant, or is irregular in attendance at school or is habitually insubordinate or disorderly during attendance at school, the pupil may be referred to a school attendance review board. If the school attendance review board determines that available community resources can resolve the problem of the truant or insubordinate pupil, then the board shall direct the pupil or the pupil's parents or both to make use of those community resources. The school attendance review board, at any time as it determines proper, may require the pupil or parent of the pupil, or both to furnish satisfactory evidence of participation in the available community services.

Education Code 48291 Referral To SARB

In the event that any such parent, guardian, or other person continually and willfully fails to respond to the directives of the school attendance review board or services provided, the school attendance review board shall direct the school district to make and file in the proper court a criminal complaint against the parent, guardian, or other person.

Student Responsibilities

- ✓ Attend school and be on time every day and in class for the full assigned day.
- ✓ Obey all school rules and regulations and maintain good behavior in the classroom, on campus and to and from school.
- ✓ Complete all assigned classwork and homework.
- ✓ Take individual responsibility for preparing for school (get up, get ready and get to school).
- ✓ Earn at least 30 credits or be on track for graduation or advancement to next grade level.

Parent Responsibilities

- ✓ Acknowledge that it is your responsibility as a parent to see that your child arrives to school on time and attends the full assigned day, every day that school is in session.
- ✓ Attend all school meetings and conferences for your child.
- ✓ Present to the school a note from a medical professional in the case of absence due to illness. In the event that absence is for another reason, proof of activity leading to absence will be required (such as a court paper).
- ✓ Ensure that your child has an environment conducive to study, a time and place for homework, adequate school supplies and support
- ✓ Immediately report any change of address or telephone number to the school.
- ✓ Comply with all SARB directives and guidelines, including student and family counseling and referral for medical services.

Additional SARB directives:

- ☐ Student counseling (MINIMUM OF SIX SESSIONS)
- ☐ Family counseling
- ☐ Medical evaluation/treatment
- ☐ Community Service (MINIMUM OF 15 HOURS)
- ☐ Other _____

This contract shall remain in effect until revoked, but will not expire before one calendar year regardless of school placement.

I UNDERSTAND THAT MY SIGNATURE BELOW CERTIFIES AGREEMENT WITH ALL PROVISIONS OF THE SARB CONTRACT AND THAT FAILURE TO ADHERE TO ALL PROVISIONS MAY RESULT IN A REQUEST FOR LEGAL ACTION BY THE DISTRICT ATTORNEY AND/OR ANY OTHER GOVERNMENT AGENCY WITH INTEREST IN THIS CASE (HSA, PROBATION, LAW ENFORCEMENT) I UNDERSTAND THAT IF I REFUSE TO SIGN THIS CONTRACT, THIS CONTRACT SHALL BE STILL BE ENFORCEABLE.

Parent Signature _____ Date _____

CWA Administrator's Signature Dee Alimbini Date 9/18/14

REFUSAL TO SIGN VERIFIED BY: _____ DATE _____

03/12/2015 22:12 2099 714

FRDRICKHST

PAGE 01/01

SCHOOL PLACEMENT	NOTES:
<input checked="" type="checkbox"/> Jane Frederick High School <input type="checkbox"/> San Joaquin County Operated Schools <input type="checkbox"/> Other	

SERVICES: RSP _____ SDC _____ Current 504 _____	STOCKTON UNIFIED SCHOOL DISTRICT STUDENT SUPPORT SERVICES/CHILD WELFARE AND ATTENDANCE School Attendance Review Board Contract	TRUANCY <input checked="" type="checkbox"/> BEHAVIOR _____ OTHER _____
--	---	---

Student's name Cara Robinson	Grade 11	Credits(HS) 7250	Attendance Area/School/Referring School SUSD/Edison
Address 620 W. Harding Way Stk. 95204	Date of Birth 3/4/97	Home and Cell Telephone Number 289-1227-5140	
Parent's/Guardian's Name Carolyn Robinson & Robby	Parent Identification	PERM ID# 2860353	CSIS #

Education Code 48263 School Attendance Review Board Referral (SARB)

If any minor pupil in any district of a county is a habitual truant, or is irregular in attendance at school or is habitually insubordinate or disorderly during attendance at school, the pupil may be referred to a school attendance review board. If the school attendance review board determines that available community resources can resolve the problem of the truant or insubordinate pupil, then the board shall direct the pupil or the pupil's parents or both to make use of those community resources. The school attendance review board, at any time as it determines proper, may require the pupil or parent of the pupil, or both to furnish satisfactory evidence of participation in the available community services.

Education Code 48291 Referral To SARB

In the event that any such parent, guardian, or other person continually and willfully fails to respond to the directives of the school attendance review board or services provided, the school attendance review board shall direct the school district to make and file in the proper court a criminal complaint against the parent, guardian, or other person.

Student Responsibilities

- ✓ Attend school and be on time every day and in class for the full assigned day.
- ✓ Obey all school rules and regulations and maintain good behavior in the classroom, on campus and to and from school.
- ✓ Complete all assigned classwork and homework.
- ✓ Take individual responsibility for preparing for school (get up, get ready and get to school).
- ✓ Earn at least 30 credits or be on track for graduation or advancement to next grade level.

Parent Responsibilities

- ✓ Acknowledge that it is your responsibility as a parent to see that your child arrives to school on time and attends the full assigned day, every day that school is in session.
- ✓ Attend all school meetings and conferences for your child.
- ✓ Present to the school a note from a medical professional in the case of absence due to illness. In the event that absence is for another reason, proof of activity leading to absence will be required (such as a court paper).
- ✓ Ensure that your child has an environment conducive to study, a time and place for homework, adequate school supplies and support
- ✓ Immediately report any change of address or telephone number to the school.
- ✓ Comply with all SARB directives and guidelines, including student and family counseling and referral for medical services.
- ✓ **Additional SARB directives:**
 - ☐ Student counseling (MINIMUM OF SIX SESSIONS)
 - ☐ Family counseling
 - ☐ Medical evaluation/treatment
 - ☐ Community Service (MINIMUM OF 15 HOURS)
 - ☐ Other

This contract shall remain in effect until revoked, but will not expire before one calendar year regardless of school placement.

I UNDERSTAND THAT MY SIGNATURE BELOW CERTIFIES AGREEMENT WITH ALL PROVISIONS OF THE SARB CONTRACT AND THAT FAILURE TO ADHERE TO ALL PROVISIONS MAY RESULT IN A REQUEST FOR LEGAL ACTION BY THE DISTRICT ATTORNEY AND/OR ANY OTHER GOVERNMENT AGENCY WITH INTEREST IN THIS CASE (HSA, PROBATION, LAW ENFORCEMENT) I UNDERSTAND THAT IF I REFUSE TO SIGN THIS CONTRACT, THIS CONTRACT SHALL BE STILL BE ENFORCEABLE

Parent Signature

Date **10-7-13**

CWA Administrator's Signature

Date **10-7-13**

REFUSAL TO SIGN VERIFIED BY: _____

DATE _____

COMPLAINT FORM

Stockton Unified School District

2015 OCT 14 PM 4:27

Last <u>Robinson</u>	First <u>Bunny</u>
Address <u>620 W. Harding Way</u>	City <u>Stockton</u>
State <u>CA.</u>	Zip <u>95204</u>
Home Phone <u>(209) 390-0343</u>	Other Phone <u>(209) 271-6448</u>
Location and date of the event leading to the complaint <u>Jane Fiedrich High School</u>	
Name of the person(s) you are complaining about <u>Mr Mark Hageman "Harassment"</u>	
Please check the box next to the area your complaint is about:	
Programs <input type="checkbox"/> Adult Basic Education <input type="checkbox"/> Career Technical Education <input type="checkbox"/> Child Care and Development Programs <input type="checkbox"/> Child Nutrition Programs <input type="checkbox"/> Pupil Fees <input type="checkbox"/> Consolidated Categorical Aid Programs <input type="checkbox"/> Migrant Education <input type="checkbox"/> Other (Please Specify) _____	
District Departments <input type="checkbox"/> Business Services <input type="checkbox"/> Community Relations <input type="checkbox"/> Curriculum <input type="checkbox"/> Education Services (K-12, Adult) <input type="checkbox"/> Facilities Services <input type="checkbox"/> Food Services <input type="checkbox"/> Health Services <input type="checkbox"/> Human Resources <input type="checkbox"/> Information Services <input type="checkbox"/> Parent/Community Empowerment <input type="checkbox"/> Police <input type="checkbox"/> Research <input type="checkbox"/> Risk Management <input type="checkbox"/> Special Education <input type="checkbox"/> Student Services <input type="checkbox"/> Transportation <input type="checkbox"/> Other (Please Specify) _____	
Discrimination (If you believe it's discrimination, please check the type) <input checked="" type="checkbox"/> Race <input type="checkbox"/> Age <input checked="" type="checkbox"/> Gender <input type="checkbox"/> Other (Please Specify) <u>No Due Process discrimination, Civil Rights Violation.</u>	
Continue to the next page	

Ronny Robinson

March 30, 2016

Appeal of Complaints, No. 15.084, Board Policy 1312.1

Community Relations, Complaints Concerning District
Employees

To Whom It May Concern

Dear Mr. Mark Hageman:

Here our complain responding to Mr. Mark Hageman, Assistant Superintendent, Education Services K-12. Here our main concerns regarding Mr. Hageman letter to us: Appeal of Complaint, NO 15.084, Board Policy 1312.1 Community Relation, and Complaints Concerning District Employees. Mr. Mark Hageman, Assistant Superintendent, and Education Services k-12 your apology is not acceptable. It has been to long for you to response to our important complaint: we mate with you on March 12, 2015 in your office at 4:00pm to discuss our concerns regarding our daughter's DUE PROCESS OF THE LAW HEARING: now here it was four months later on July 27, 2015, for your response too such an important matter only to hear that Mr. Anderson at Jane Fredrick High School, principal, Mr.

Sergio Betancourt Compliance Analyst, Compliance Services, Mr. Jeff Keller, Director, Education Services, and Mr. Mark Hageman, Assistant Superintendent, Education Services K-12, was in compliance with the Stockton Unified School District Rules and Regulations and all *Board policies. By Law Mr. Mark Hageman had sixty days to respond to our complaint, which in turn he failed to comply with the actual Rules and Regulation and procedures that are outline in the Stockton Unified School District Manu*

Mr. Mark Hageman stated, "Pursuant to Board Policy 5142...staff are responsible for the conduct and safety of all students from the time they come under school supervision until they leave school supervision, whether on school premises or not. In paragraph 6 on the documentation on the front page Mr. Mark Hageman stated, "THE INCIDENT WAS OUTSIDE of THE SUSD POLICE DEPARTMENT JURISDICTION. So the request was forwarded to STOCKTON POLICE DEPARTMENT". How could he make such a statement when the incident took place while the school kids were on their way home from school to catch the bus at the Stockton Regional bus transit? It clearly states in the STUDENT CONDUCT CODE GROUNDS FOR DISCIPLINARY ACTION. The following: from our understanding the California code is clear that the school will discipline students for

misbehavior when the offense occurs. While on school grounds. While going to or coming from school. During the lunch period whether on or off campus, and during or while going to or from a school- sponsored activity.

An example of unacceptable behavior is listed below: the explanation and consequences listed below for Conduct Code violation are /or consequences. Students may be suspended and /or expelled from school for any violation of educational codes.

48900, 48900.2, 48900.3, 48900.4, 48900.7, and 49818.

However, suspension will only be used for the first offense for the offenses identified by LAW or where it is determined the student's presence causes a danger to someone. Similarity, expulsion will only be utilized for the first offense in a serious case of misconduct.

The Documentation stated, in the first paragraph "Pursuant to Board Policy 5142..." is the wronged code for what he's tried to convey. We have presented the correct codes in the above paragraph.

Furthermore, Mr. Chris Anderson the Jane Fredrick High School principle. Failed to attempt to work with the student and parent/ guardian to help the student improve, and stop inappropriate or disruptive behavior that interferes with the rights of all students to learn. Mr. Mark Hageman stated, "Principal Chris Anderson investigated the incident and

determined that Cara Lynn Robinson, was implicated in the incident after obtaining / witness statements. There was a sizeable group that witnessed the incident and also included some cell phone video coverage of the incident involved at least an assault and battery and that theft/ larceny that are serious criminal matters”.

First, we never got the fair opportunity to look at this video coverage or question witnesses statements. WE NEVER GOT OUR DUE PROCESS OF THE LAW HEARING: to give us the legal opportunity to question this material that has been obtained from Mr. Anderson. To truly find out the guilt or innocence of our child was totally DENIEDED. Our daughter was falsely accused of pc.4879© Grand Theft 182 (A) Conspiracy. Mr. Mark Hageman, stated, above that “theft/larceny”. “This is our first indication” The unlawful taking of personal property with intent to deprive the rightful owner of it permanently. Please read attached police report and Mr. Anderson report states nothing about the larceny offense. The charges were dropped against our daughter. The victim and witnesses never came forward to public officials to tell them what really happened outside the statements that were made to Mr. Anderson and the Stockton Police Officer Darrel Sandoval. The Stockton Juvenile Hall prosecutor released our daughter DUE TO NO VIDEO COVERAGE OF THE INCIDENT/ NO WITNESSES STATEMENTS/NO VICTIM STATEMENTS, STATING THAT OUR

DAUGHTER CARA LYNN ROBINSON PARTICIPATED ANY KIND OF SHAPE AND FORM/ No EVIDENCE OF ANY KIND TO PETITION THE COURT.

Mr. Hageman stated, "This is the unbelievable part to this madness". In his completed investigation he stated, "Mr. Anderson contacted the Stockton Unified Police Department on September 18, 2014". If that was true, then where is our copy of the report? Why didn't Mr. Mark Hageman give us this particular documentation? The Stockton Police Department gave us a copy of their police report. Now, where is the Stockton Unified School District Report? We need it to prove are case and all the deception, injustice, prejudice, and discrimination that are occurring everyday within the Stockton Unified School District.

Mr. Mark Hageman, stated, "Stockton Unified School District Police Department, in turn, contacted the Stockton Police Department. This is contrary to the actual police report please read it clearly states Mr. Anderson called the Stockton Police department On September 18, 2014 two days after the actual incident. "WE FIND MR.HAGEMAN STATEMENT REGARDING WHO CALLED THE STOCKTON POLICE DEPARTMEN T "UNTRUE". This is what so discussing about these people in management positions in the Stockton Unified School District their unethical, unprofessional, and irresponsible, attitude towards my family

and specifically my daughter you have used lies; deception, and a cover up to try and rid yourself of this "Situation".

Mr. Mark Hageman Assistant Superintendent, Went on to say, the incident was outside the Stockton Unified School District police jurisdiction so the request was forward to the Stockton Police Department. Jane Fredrick High School about a one half of a mile from the (RTD). The Jane Fredrick High School students use the RTD location to catch the bus home after school. The California State Education Code is clear that schools discipline for misbehavior when the offense occurs on school grounds, and while going to or coming from school. This includes during lunch period whether on or off campus and during or while going to and from a school-sponsored activity.

On the other hand, the Stockton Unified School District have full responsibilities to patrol all Stockton Unified School district in the CITY OR COUNTY they do have full jurisdiction. Also, their responsibilities consist of handling in school incidents and out of school incident when en route to or from school.

The very first time we ever heard that our daughter violated her SARB contract was from Mr. Jeff Keller, our complaints has nothing to do with our daughter had violating her SARB contract; it was about her being called from the classroom during school hours to Mr. Anderson's office to be interrogated and arrested for a crime she did not commit. Since Mr. Keller,

and Mr. Mark Hageman, both stated that our daughter violated her SARB contract. This is contrary to the evidence we obtained from the Child and Welfare Attendance. Enclosed is a copy of our daughter attendances, during her brief stay at Jane Fredrick High School, it clearly shows that our daughter had superb attendance up until the date of the incident on September 18, 2014, "when she got arrested".

Model SARB use a variety of forms, letters, and other document to seek involvement and collaboration of families to ensure the success of all children.

Regulation from the state's Education code, Government Code. WIC, Vehicle code, Labor code, and Family Code are frequently used by SARBS to ensure compliance with California' compulsory education laws. Compulsory education laws.

Although it is sometimes necessary for the SARB to direct the school district to make and file criminal complaints, SARB should first attempt to build adequate bridges between school and family.

Mr. Jeff Keller, Director, and Mr. Mark Hageman, both need to provide us with the proper documentation regarding the paper work for this particular SARB violation meeting. For example, dates, times, and location after our daughter's incident on September 18, 2014. If our daughter violated her SARB contract as well as Mr. Anderson, the Jane Fredrick high School principal,

need to have this particular documentation we need this documentation for our records.

Conclusion: we are very disappointed by the unfair ruling on behalf of Mr. Jeff Keller and Mr. Mark Hageman, decision too not award us as parents to Cara Lynn Robinson, our required by law due process of the law hearing of any kind. Although we find their decision unethical, prejudice, biases, discriminatory, and taking this incident to the highest rank to the lowest ranks only to be put on death ears.

These individuals are supposed to be professional, honorable trustworthy, an impartial. I feel that those representing Stockton Unified have not lived up to the aforementioned qualities. It is very hard to get a fair shake with a district that is unethical in its dealings, and not keeping the kids as the primary focus. I hope I can convey these problems more clearly. And I hope it will elicit a genuine response from the people at SUSD, this time. Having no direct involvement or interest and not favoring one person or side more than another. And the unethical behaviors such as not conforming to agreed standards of moral conduct, especially in the Stockton Unified School District with their unethical business practices on a daily basis neglecting what's most important to the general public the children's. With individuals like that in key positions nobody

even have a half a chance for justices, fair hearing, required procedures neglected, and an un-caring attitude.

Sincerely: Ronny Robinson



Stockton Unified School District

Sergio E. Betancourt, Compliance Analyst
Compliance Services

701 North Madison Street • Stockton, CA 95202
Phone (209) 933-7100 Fax (209) 466-6786
Email sbetancourt@stocktonusd.net

CONFIDENTIAL

October 20, 2015

Ronny Robinson
620 W Harding Way
Stockton, CA 95204

RE: Appeal of Complaint Case No. 15.084, Board Policy 1312.1, Community Relations, Complaints
Concerning District Employees

Dear Mr. Robinson:

Our office received your appeal on October 16, 2015 of the July 27, 2015 response to your appeal of the initial complaint by then Assistant Superintendent Mark Hagemann. We are unable to process your appeal and are returning it to you.

Board Policy 1312.1, Community Relations, Complaints Concerning District Employees at page 2 states: "Within 15 days of receipt of a decision, the complainant or the employee against whom the complaint was made may appeal a decision by the next level manager to the Superintendent..." Your appeal was not received within 15 days of receipt of Dr. Hagemann's decision, dated July 27, 2015.

Should you wish to discuss the above please contact me at your earliest convenience.

Cordially,

Sergio Betancourt
Compliance Analyst

Copy: Dr. Mark Hagemann, Deputy Superintendent

Enclose: Appeal, October 16, 2015

Jane Frederick High School Christopher Anderson, Principal 1141 E Weber Ave Stockton, CA 95205-4916		Stockton Unified School District 2013-2014		Student Name: Robinson, Cara L.		
				Perm ID: 2860353	Grade: 11	Home Room:

Grade Detail									
Period	Course ID	Course Title	4th Qtr	2nd Sem	Teacher	Cond	WkHbt	ALL ABS	ALL TDY
1	212000	Eng 1-2	C-	C-	Sudderth, B.			8	6
2	262000	Art 1-2	B+	B+	Walsh, R.			3	0
3	212200	Eng 5-6	D	D	Leyva, S.			5	0
4	229200	EE Math Gr 11	B-	B-	Shawver, L.	N	S	3	6

GPA	TOT GPA RP	2.25				
Grade Legend	A+ = Outstanding	A = Outstanding	A- = Outstanding	B+ = Above Average	B = Above Average	B- = Above Average
	C+ = Average	C = Average	C- = Average	D+ = Below Average	D = Below Average	D- = Below Average
	F = Failure	P = Pass	I = Incomplete	W = Withdraw	NC = No Credit	NM = No Mark
	NR = Not Reported	CR = Credit				
Cond Legend	U = Unsatisfactory	O = Outstanding	S = Satisfactory	N = Need Improvement		
WkHbts Legend	U = Unsatisfactory	O = Outstanding	S = Satisfactory	N = Need Improvement		

Jane Frederick High School
 2nd Semester Report Card 2013/2014

See Reverse Side For Opening Instructions

Jane Frederick High School
 1141 E Weber Ave
 Stockton, CA 95205-4916

PRESORTED
 FIRST CLASS MAIL
 US POSTAGE PAID
 Stockton, CA
 PERMIT NO. 402


RETURN SERVICE REQUESTED

Carolyn/Ronny Robinson
 RE: Robinson, Cara L.
 620 W Harding Wy
 Stockton, CA 95204

Student Name Robinson, Cara L.				Stockton Unified School District Jane Frederick High School		Jane Frederick High School 1141 E Weber Ave Stockton, CA 95205-4916	
Perm ID 2860353	State ID 2130612805	Grd 12	Gen F				
Date Of Birth 03/04/1997		Phone 209-933-7496		Enter Date 08/22/2002	Leave Date 09/23/2014	Phone 209-933-7340	Fax
Home Address 620 W Harding Wy Stockton, CA 95206				Class of 2015		Counselor Pagnini, Julie	

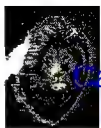
Crs ID	Course Title	Mark	Cred Att/Cmp	Crs ID	Course Title	Mark	Cred Att/Cmp	Graduation Requirements - Credit Summary				
Stagg High School				Edison High School				Subject Area	Req'd	Compl	Needed	
Yr: 2011	Month: 12	Grade: 09		Yr: 2013	Month: 3	Grade: 10		English	40.00	27.50	12.50	
2414	English 1-2	D-	5.00 / 5.00	2415	English 3-4	D+	5.00 / 5.00	World History	10.00	10.00		
3690	Algebra 1-2	F	5.00 / 0.00	2870	Spanish 1-2	F	5.00 / 0.00	US History	10.00	0.00	10.00	
3905	Exit Exam Math 9	D-	5.00 / 5.00	5692	World History 1-2	D-	5.00 / 5.00	Amer Govt	5.00	0.00	5.00	
5180	Physical Education 1-2	C+	5.00 / 5.00	n9034	Foundational Writing 1-2	F	5.00 / 0.00	Economics	5.00	0.00	5.00	
5380	Integrated Physical Scienc	D-	5.00 / 5.00	Cred Att: 20.00	Cred Cmo: 10.00	GPA: 0.50		Mathematics	20.00	10.00	10.00	
5716	High School Succes 1-2	D-	5.00 / 5.00	Edison High School				Biological Science	10.00	5.00	5.00	
Cred Att: 30.00	Cred Cmo: 25.00	GPA: 1.00		Yr: 2013	Month: 5	Grade: 10		Physical Ed	20.00	5.00	15.00	
Stagg High School				2415	English 3-4	C-	5.00 / 5.00	Wld Lang/V&P Arts/CTE	10.00	10.00		
Yr: 2012	Month: 5	Grade: 09		2870	Spanish 1-2	D-	5.00 / 5.00	Physical Science	10.00	10.00		
2414	English 1-2	F	5.00 / 0.00	5692	World History 1-2	D+	5.00 / 5.00	Electives	70.00	25.00	45.00	
3690	Algebra 1-2	F	5.00 / 0.00	n9034	Foundational Writing 1-2	F	5.00 / 0.00	TOTALS	210.00	102.50	107.50	
3905	Exit Exam Math 9	F	5.00 / 0.00	Cred Att: 20.00	Cred Cmo: 15.00	GPA: 1.00		Graduation Requirements - Test History				
5180	Physical Education 1-2	F	5.00 / 0.00	Jane Frederick High School				Test Name	Admin Dt	Result	Perf Lvl	Score
5380	Integrated Physical Scienc	F	5.00 / 0.00	Yr: 2013	Month: 12	Grade: 11		CAHSEE	03/12/2013	Passed		366
5716	High School Succes 1-2	F	5.00 / 0.00	212200	English 5-6	B+	2.50 / 2.50	^ Edison High School				
Cred Att: 30.00	Cred Cmo: 0.00	GPA: 0.00		222000	Algebra 1-2	D-	2.50 / 2.50	CAHSEM	03/13/2013	Passed		351
Edison High School				227200	Algebra Support 1-2	D	2.50 / 2.50	^ Edison High School				
Yr: 2012	Month: 10	Grade: 10		412300	Law and Society 1-2	B-	2.50 / 2.50					
1434	Computer Ed 1 (business)	B	5.00 / 5.00	Cred Att: 10.00	Cred Cmo: 10.00	GPA: 2.00						
3690	Algebra 1-2	F	5.00 / 0.00	Jane Frederick High School								
5380	Integrated Physical Scienc	D+	5.00 / 5.00	Yr: 2014	Month: 3	Grade: 11						
5390	Biology 1-2	D	5.00 / 5.00	212000	English 1-2	C-	2.50 / 2.50					
Cred Att: 20.00	Cred Cmo: 15.00	GPA: 1.25		212200	English 5-6	D+	2.50 / 2.50					
Edison High School				222000	Algebra 1-2	NM	2.50 / 0.00					
Yr: 2012	Month: 11	Grade: 10		229200	Exit Exam Math Grade 11	C-	2.50 / 2.50					
7075	Health	C+	2.50 / 2.50	262000	Art 1-2	D+	2.50 / 2.50					
Cred Att: 2.50	Cred Cmo: 2.50	GPA: 2.00		Cred Att: 10.00	Cred Cmo: 10.00	GPA: 1.50						
Edison High School				Jane Frederick High School								
Yr: 2012	Month: 12	Grade: 10		Yr: 2014	Month: 6	Grade: 11						
3690	Algebra 1-2	F	5.00 / 0.00	212000	English 1-2	C-	2.50 / 2.50					
5380	Integrated Physical Scienc	D	5.00 / 5.00	212200	English 5-6	D	2.50 / 2.50					
5390	Biology 1-2	F	5.00 / 0.00	229200	Exit Exam Math Grade 11	B-	2.50 / 2.50					
7030	Driver Education	F	2.50 / 0.00	262000	Art 1-2	B+	2.50 / 2.50					
Cred Att: 17.50	Cred Cmo: 5.00	GPA: 0.29		Cred Att: 10.00	Cred Cmo: 10.00	GPA: 2.25						

Transcript is unofficial unless signed by a school official

GPA SUMMARY Total GPA CSU GPA TOT GPA CH 0.90 CSU GPA CH 1.11 UWEG GPA CH 0.90 CAL GRANT CH 1.11				NOTES 08-14-12 Entered Edison HS 10-07-13 Trnsfd from Edison HS 05-20-14 Records sent to: Jane Frederick HS Referred to CWA 9-23-2014		
Enter Date 08/22/2002	Ranked By Total GPA					
Class Rank	Graduation Date					
Class of 2015		Enter Date 08/22/2002	Leave Date 09/23/2014	Class Rank	Graduation Date	Class of 2015

Signature _____

09/24/2015



Jane Frederick High School

Year: 2014-2015

Case 2:16-cv-02112-KJM-GSH Document 1-1 Filed 09/07/16 Page 57 of 108

Period Student Attendance Profile

Report: ATP-201

Student Information

Student Name (Robinson, Cara L.)	Perm ID 2860353	Gender F	Grade 12	Home Address 620 W Harding Wy Stockton, CA 95206
Last Name Goes By	Nick Name	Birth Date 03/04/1997		
Phone 209-933-7496	Home Language English	Resolved African American	Enter Date 08/12/2014	Leave Date 09/23/2014

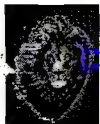
Custodial Information

Mother Robinson, Carolyn	Phone Type Home	Phone 209-933-7496	Extension Moms Phone
<input checked="" type="checkbox"/> Contact Allowed	<input checked="" type="checkbox"/> Has Custody	<input checked="" type="checkbox"/> Lives With	<input checked="" type="checkbox"/> Ed. Rights
<input checked="" type="checkbox"/> Mailings Allowed			
Father Robinson, Ronny	Phone Type Home	Phone 209-933-7496	Extension Moms Phone
<input checked="" type="checkbox"/> Contact Allowed	<input checked="" type="checkbox"/> Has Custody	<input checked="" type="checkbox"/> Lives With	<input checked="" type="checkbox"/> Ed. Rights
<input checked="" type="checkbox"/> Mailings Allowed			

Attendance By Period

Date	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
08/12/2014 (B)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/13/2014 (C)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/14/2014 (D)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/15/2014 (E)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/18/2014 (F)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/19/2014 (G)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/20/2014 (H)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/21/2014 (I)	UNX	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/22/2014 (J)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/25/2014 (A)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/26/2014 (B)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/27/2014 (C)	PRE	PRE	UNX	UNX	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/28/2014 (D)	UNX	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/29/2014 (E)	PRE	UNX	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
→ 09/02/2014 (G)	UNX	UNX	UNX	UNX	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/03/2014 (H)	UNX	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/04/2014 (I)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/05/2014 (J)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/08/2014 (A)	UNX	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/09/2014 (B)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/10/2014 (C)	UNX	TDY	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/11/2014 (D)	UNX	UNX	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/12/2014 (E)	PRE	PRE	PRE	UNX	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/15/2014 (F)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/16/2014 (G)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/17/2014 (H)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/18/2014 (I)	PRE	PRE	PRE	UNX	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
→ 09/19/2014 (J)	SUS	SUS	SUS	SUS	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
→ 09/22/2014 (A)	SUS	SUS	SUS	SUS	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/23/2014 (B)	UNX	UNX	UNX	UNX	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
Total	30	30	30	30	0	0	0	0	0	0	0	0	0	0	0

(Robinson, Cara L.)



Jane Frederick High School

Period Student Attendance Profile

Case 2:16-cv-02111-KJM-GGH Document 1 Filed 09/02/16 Page 58 of 108
Year: 2014-2015
Report: ATP201

Student Information

Student Name (Robinson, Cara L.)	Perm ID 2860353	Gender F	Grade 12	Home Address 620 W Harding Wy Stockton, CA 95206
Last Name Goes By	Nick Name	Birth Date 03/04/1997		
Phone 209-933-7496	Home Language English	Resolved African American	Enter Date 08/12/2014	Leave Date 09/23/2014

Custodial Information

Mother Robinson, Carolyn	Phone Type Home	Phone 209-933-7496	Extension Moms Phone
<input checked="" type="checkbox"/> Contact Allowed	<input checked="" type="checkbox"/> Has Custody	<input checked="" type="checkbox"/> Lives With	<input checked="" type="checkbox"/> Ed. Rights
<input checked="" type="checkbox"/> Mailings Allowed			
Father Robinson, Ronny	Phone Type Home	Phone 209-933-7496	Extension Moms Phone
<input checked="" type="checkbox"/> Contact Allowed	<input checked="" type="checkbox"/> Has Custody	<input checked="" type="checkbox"/> Lives With	<input checked="" type="checkbox"/> Ed. Rights
<input checked="" type="checkbox"/> Mailings Allowed			

Attendance By Period

Date	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
------	---	---	---	---	---	---	---	---	---	----	----	----	----	----	----

(Robinson, Cara L.)

Period Reason Code Type Totals

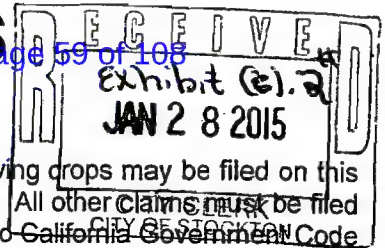
POS = 90 EXC = 0 UNV = 0 UNE = 28 TDY = 0 ACT = 0
TAR = 2

Period Reason Code Totals

PRE = 90 ISN = 0 UNV = 0 UNX = 20 PER = 0 ACT = 0
RUN = 0 ISS = 0 EXC = 0 JUS = 0 TST = 0 MED = 0
FNR = 0 HDL = 0 FTP = 0 TDY = 1 ISA = 0 NSS = 0
ILL = 0 OTH = 0 ADM = 0 ESU = 0 SUS = 8 SAT = 0
30T = 1 CUT = 0

Reason Code Legend

PRE = Present	ISN = Ind Study	UNV = Unverified	UNX = Unexcused	PER = Permitted	ACT = Activity
RUN = Runaway	ISS = InSch Sus	EXC = Excused	JUS = Justified	TST = Testing	MED = Med Dr Excuse
FNR = Funeral	HDL = Headlice	FTP = Field Trip	TDY = Tardy	ISA = Ind Study A	NSS = NoShow ISS
ILL = Illness	OTH = Other	ADM = Admin Counselo	ESU = Expulsion	SUS = Suspended	SAT = Sat School
30T = 30 Min Tdy	CUT = Truant	N/S = Not Scheduled			

CLAIM FOR DAMAGES**CITY OF STOCKTON**

Note: Claims for bodily injury or death, damage to personal property, or damage to growing crops may be filed on this form, not later than six months after the occurrence out of which the claims arose. All other claims must be filed not later than one year after the occurrence out of which the claims arose. (Refer to California Government Code sections 910.4 and 911.2)

DIRECTION: The original claim must be filed with the City of Stockton City Clerk's Office, 425 North El Dorado Street, Stockton, California 95202. Retain the yellow copy for your records.

NAME OF CLAIMANT: Robinson Remy Date of Birth 07/17/1962
(Last) (First) (Middle)

HOME ADDRESS/PHONE: 620 W. Harding Wy Stockton CA 95204
(Number/Street) (City/State/Zip Code) (Phone Number)

BUSINESS ADDRESS/ PHONE: (209) 271-6448 (11)
(Number/Street) (City/State/Zip Code) (Phone Number)

DIRECTION: Indicate to which address you wish notice sent ☒ HOME ☐ BUSINESS

WHEN DID INJURY OR DAMAGE OCCUR? _____
(Month/Day/Year) (Day of Week) (Time of Day)

WHERE DID INJURY OR DAMAGE OCCUR?
(Street address, intersecting streets, or other location) → See Attachments

HOW DID INJURY OR DAMAGE OCCUR?
(Describe accident or occurrence in complete detail) → See Attachment

NAME OF CITY EMPLOYEE(S) INVOLVED? _____

WHAT ACTION OR INACTION OF CITY EMPLOYEE(S) CAUSED YOUR INJURY OR DAMAGES? → See Attachment

WHAT INJURIES OR DAMAGES DID YOU SUFFER? → See Attachment

TOTAL AMOUNT CLAIMED: ☒ Unlimited case—over \$25,000.00 ☐ Limited case—\$25,000.00 or less

If under \$10,000.00, please specify amount \$ _____

DIRECTION: Sign and date this Claim For Damages below. If the signer is not the claimant, indicate the relationship of the signer to the claimant.

Remy Robinson
(Signature)

(Month/Day/Year)

(Social Security Number-Optional)

(Relationship of signer, if not claimant)

DIRECTION: You may attach and include with this completed form any bills for medical treatment and expenses, and any estimates or bills for personal property damage. Questions may be referred to (209) 937-8807

Claim for Damages
City of Stockton

1. When did the injury occur:

September 16, 2014 in the am part of the day

2. Where did the injury or damage occur?

Jane Fredrik High school. 1141 E. Weber Ave, Stockton Ca 95204

3. How did injury or damage occur?

On September 16, 2014 a female student from Jane Fredrick high school got into a fight with an adult female in the downtown area. The student from Jane Fredrick had her cell phone taken during the altercation.

Cara, my daughter had no part in this altercation that occurred on September 16th. Cara, along with 30 other students witnessed the altercation between the three female students and one adult female. Everybody that was a witness to the altercation reported that an adult male took the students cell phone.

On September 18, 2014 is when Cara was interrogated without adult supervision and falsely arrested and taken to Juvenile Hall. **All without parent contact.**

4. Name of city employee involved?

1560/Sandoval, Darren

5. What action or interaction of city employees caused your injury or damages?

On Thursday September 18, 2014 at 9; 15 are. OFC Sandoval Darren (2A53) and Mr. Anderson, school principle, BOTH interrogated Cara without any parental consent. Cara was being interrogated for the altercation and theft of the cell phone. Cara was question and accused repeatedly about the crime. Cara felt as if the two men were trying to make her say she was involved in some way, confusing her. This is why Cara asked for her parents to be called several times. Mr. Anderson said he would call her parents, "later". Which he did after Cara was arrested.

On this same day my 17 year old daughter Cara Robinson was arrested and charged with attempt to commit robbery or extortion AND Battery (PC 243A) . BOTH crimes she did not commit. She was taken to Juvenile hall where she stayed for four nights and five days.

On September 22, 2014, at 9:15 the prosecutor from Juvenile hall released Cara. Why? Because the victim's statement stated that Cara had NOTHING AT ALL to do with the altercation or the theft that occurred on September 16, + 2014.

6. *What injuries or damages did you suffer?*

Cara is a passive, smart and caring young lady. Cara has high self-esteem and always a positive outlook on life. Being falsely accused of a crime and arrested in front of her peers at school was completely humiliating and hurtful. The defamation of Cara's character is now on the line. Cara has never been in a fight or suspended from school nor has she even been in trouble with the law. Cara is very close to her mother and father and has never spent any time away from her family. Being falsely arrested and incarcerated for over four days and five nights could be damaging to a young person in this society. Cara has never been involved in this kind of negative circumstances nor has she ever been involved with the police. Any young person in today's society could be negatively affected due to these circumstances.

7. On September 18, 2014, when officer: 1560/Sandoval Darren. Drove my daughter Cara Lynn Robinson. From the Stockton police department, to the Stockton juvenile hall. At a high rate of speed passing up, all vehicals on the freeway for example 80 to 85 miles per hour. "This is what my daughter observed". My daughter told the officer, that he was going too fast and that he needs to slow down, because her hands were cuffed behind her back, and that he was scaring her, because, she never drove in the back sit of a police car. Officer Sandoval Darren neglected my daughter request to slow down. Instead Officer Sandoval Darren, continue to instigate my daughter about a crime, she hadn't committed. For example: "how would you feel, if I took your cell phone without your permission." Officer Sandoval Darren, confiscated my daughter own personal cell, to use as evidence against her, thinking that the cell phone my daughter had was the victims cell phone. It took me and my wife almost 2 and half weeks to get her cell phone back, from the Stockton police department, evidence room.

Our daughter cell phone was
confiscated by officer: 1560 / Sandeval, Darren SID

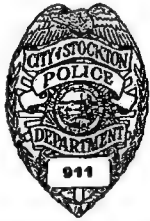
Robinson, Cara
Minor's Name

Date: 9/18/14 Cash: \$ 15⁰⁰ / + 667 charge

Item: cell & charge

Staff: P. N. [Signature]

Minor's Signature: Cara

14-34044Supplement No
0003**STOCKTON POLICE DEPARTMENT**

22 E MARKET ST.

STOCKTON, CA 95202

(209) 937-8495

Reported Date

09/18/2014

Rpt/Incident Typ

243

Member#/Dept ID#

SANDOVAL, DARREN SID

Administrative Information

Agency STOCKTON POLICE DEPARTMENT		OR 14-34044	Supplement No 0003	Reported Date 09/18/2014	Reported Time 12:32	CAD Call No 142590309
Status ARREST	Rpt/Incident Typ BATTERY (PC243A)					
Location E WEBER AV/N AMERICAN ST				City Stockton	ZIP Code 95202	Rep Dist 0104
District CC	Sector CS	From Date 09/16/2014	From Time 11:09	To Date 09/16/2014	To Time 11:09	
Member#/Dept ID# 1560/SANDOVAL, DARREN SID						
Assignment FIELD SERVICE VALLEYOAK SECONDWATCH PHASE1				Entered by 1560		
Assignment FIELD SERVICE VALLEYOAK SECONDWATCH PHASE1				RMS Transfer Successful	Prop Trans Stat Successful	
Approving Officer 2427		Approval Date 09/19/2014		Approval Time 10:51:14		
# Offenses 1	Offense PC487 (C)	Description GRAND THEFT FROM PER			Complaint Type	
# Offenses 2	Offense PC182 (A) (1)	Description CONSPIRACY COMMIT CR			Complaint Type	

Summary Narrative**Subsequent Arrest Report****ARRESTED 1: Confidential**

Involvement ARR	Inv No 1	Name See Confidential Page
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14-34044

Supplement No
0003

STOCKTON POLICE DEPARTMENT

SUSPECT 2: RIVERA, JONATHAN

Involvement	Invt No	Type	Name					MNI	Race	Sex
SUSPECT	2	Individual	RIVERA, JONATHAN					899093	BLACK	MALE
DOB	Age	Juvenile?	Height	Weight	Hair Color	Eye Color	PRN			
10/29/1994	19	No	5'08"	160#	BROWN	BROWN	2934994			

Narrative**NOTIFICATION:**

On Thursday, September 18, 2014, at 0900 hours, I, OFC Sandoval (2A53) was dispatched to Jane Frederick HS 1141 E Weber Av. regarding Suspect contact. I arrived on scene at 0915 hours.

INVESTIGATION:

Upon arrival, I met with Principal Chris Anderson, who advised that he was talking with a witness to the whole incident, from the beginning on Tuesday morning. Principal Anderson had (W1) [REDACTED] in his office. [REDACTED] was hand writing her statement for Principal Anderson. See attached for further details. (W1) [REDACTED] stated the following in summary:

STATEMENT OF (W1) [REDACTED]

14-34044

Supplement No
0003

STOCKTON POLICE DEPARTMENT

Narrative

(End of Statement)

INVESTIGATION (continued):

STATEMENT OF (Arr) Cara R. :

Cara R. denied knowing who (V1) [REDACTED] name. She only knew her from passing during their 4th period class. Cara R. stated she has Algebra next door to [REDACTED] Art class. Cara R. advised she knows (S2) Jonathan Rivera and (S3) [REDACTED] but does not really know their names. She explained that they have mutual friends from the streets. She refers to Rivera as "baby daddy" because she knows he and (S3) [REDACTED] have a son together.

However, Cara R. described (S2) Rivera as follows:

Mixed race B & H/M/A 18- 21 Yrs. 5'7"/130 (skinny) Lt complexion, Clean shaven. Curly hair.

Cara R. stated she saw [REDACTED] and Rivera at the school, JFHS, because [REDACTED] wanted to fight with (Sub1) [REDACTED] who attends the PM classes. The security guard came so [REDACTED] and [REDACTED] left.

Cara R. stated she asked [REDACTED] to bring her charger to school, because she (Cara R.) hasn't charged her cell phone in three (3) days. [REDACTED] didn't respond, but then gave her a weird look. Cara R. stated that [REDACTED] was "flashing" her cell phone making people jealous, so that was why [REDACTED] and Rivera took her cell phone.

Cara R. denied have any type of conversation with [REDACTED] or Rivera to get [REDACTED] cell phone.

(End of Statement)

INVESTIGATION (continued):

ATTACHMENTS:

Report Officer
1560/SANDOVAL, DARREN SID

Printed At
09/19/2014 11:01

Page 3 of 5

14-34044

Supplement No
0003

STOCKTON POLICE DEPARTMENT

Narrative

[REDACTED]

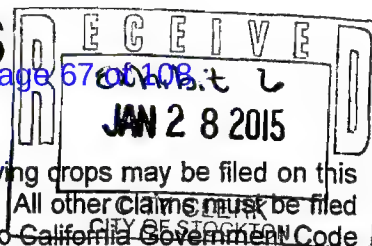
EVIDENCE

[REDACTED]

CLAIM FOR DAMAGES

Case 2:16-cv-02111-KJM-GGH Document 1 Filed 09/02/16 Page 67 of 108

CITY OF STOCKTON



Note: Claims for bodily injury or death, damage to personal property, or damage to growing crops may be filed on this form, not later than six months after the occurrence out of which the claims arose. All other claims must be filed not later than one year after the occurrence out of which the claims arose. (Refer to California Government Code sections 910.4 and 911.2)

DIRECTION: The original claim must be filed with the City of Stockton City Clerk's Office, 425 North El Dorado Street, Stockton, California 95202. Retain the yellow copy for your records.

NAME OF CLAIMANT: Robinson Remy Date of Birth 07/17/1962
(Last) (First) (Middle)
HOME ADDRESS/PHONE: 220 W. Harding Wy Stockton CA 95204
(Number/Street) (City/State/Zip Code) (Phone Number)
BUSINESS ADDRESS/ PHONE: (209) 271-6448 (H)
(Number/Street) (City/State/Zip Code) (Phone Number)

DIRECTION: Indicate to which address you wish notice sent ☒ HOME ☐ BUSINESS
WHEN DID INJURY OR DAMAGE OCCUR? _____

(Month/Day/Year) (Day of Week) (Time of Day)
WHERE DID INJURY OR DAMAGE OCCUR? → See Attachments
(Street address, intersecting streets, or other location)

HOW DID INJURY OR DAMAGE OCCUR? → See Attachment
(Describe accident or occurrence in complete detail)

NAME OF CITY EMPLOYEE(S) INVOLVED? _____

WHAT ACTION OR INACTION OF CITY EMPLOYEE(S) CAUSED YOUR INJURY OR DAMAGES? → See Attachment

WHAT INJURIES OR DAMAGES DID YOU SUFFER? → See Attachment

TOTAL AMOUNT CLAIMED: ☒ Unlimited case—over \$25,000.00 ☐ Limited case—\$25,000.00 or less

If under \$10,000.00, please specify amount \$ _____

DIRECTION: Sign and date this Claim For Damages below. If the signer is not the claimant, indicate the relationship of the signer to the claimant.

Remy Robinson _____
(Signature) (Month/Day/Year) (Social Security Number-Optional)
(Relationship of signer, if not claimant)

DIRECTION: You may attach and include with this completed form any bills for medical treatment and expenses, and any estimates or bills for personal property damage. Questions may be referred to (209) 937-8807

(Refer to California Penal Code Section 72)

CLAIM FOR DAMAGES

Case 2:16-cv-02111-KJM-GGH Document 1 Filed 09/02/16 Page 68 of 108

CITY OF STOCKTON

Note: Claims for bodily injury or death, damage to personal property, or damage to growing crops may be filed on this form, not later than six months after the occurrence out of which the claims arose. All other claims must be filed not later than one year after the occurrence out of which the claims arose. (Refer to California Government Code sections 910.4 and 911.2)

DIRECTION: The original claim must be filed with the City of Stockton City Clerk's Office, 425 North El Dorado Street, Stockton, California 95202. Retain the yellow copy for your records.

NAME OF CLAIMANT: Robinson (Last) Ronny (First) (Middle) Date of Birth 07/17/62 (209) 271-6448.
HOME ADDRESS/PHONE: 620 W. Harding Way. (Number/Street) Stockton CA 95204. (City/State/Zip Code) (Phone Number)

BUSINESS ADDRESS/ PHONE: _____ (Number/Street) (City/State/Zip Code) (Phone Number)

DIRECTION: Indicate to which address you wish notice sent ☒ HOME ☐ BUSINESS
WHEN DID INJURY OR DAMAGE OCCUR? Sept 18, 2014 (Month/Day/Year) Thursday (Day of Week) Morning (Time of Day)

① WHERE DID INJURY OR DAMAGE OCCUR?
(Street address, intersecting streets, or other location) Jane Fredrich High School. 1141 E. Weber
ave. Stockton, CA 95205-4916. (209) 933-7340.

② HOW DID INJURY OR DAMAGE OCCUR?
(Describe accident or occurrence in complete detail) _____

NAME OF CITY EMPLOYEE(S) INVOLVED? 1560 / Sandoval, Darren (SID).

③ WHAT ACTION OR INACTION OF CITY EMPLOYEE(S) CAUSED YOUR INJURY OR DAMAGES? _____

④ WHAT INJURIES OR DAMAGES DID YOU SUFFER? _____

TOTAL AMOUNT CLAIMED: ☒ Unlimited case--over \$25,000.00 ☐ Limited case--\$25,000.00 or less
If under \$10,000.00, please specify amount \$ _____

DIRECTION: Sign and date this Claim For Damages below. If the signer is not the claimant, indicate the relationship of the signer to the claimant.

Ronny Robinson (Signature) January 6, 2014. (Month/Day/Year) (Social Security Number-Optional)
Father of Cara Lynn Robinson (Relationship of signer, if not claimant)

DIRECTION: You may attach and include with this completed form any bills for medical treatment and expenses, and any estimates or bills for personal property damage. Questions may be referred to (209) 937-8807

NOTE: PRESENTATION OF A FALSE CLAIM IS A FELONY (Refer to California Penal Code Section 72)



CITY OF STOCKTON

HUMAN RESOURCES DEPARTMENT
STEWART / EBERHARDT BUILDING • 22 E. Weber Avenue, Suite 150 • Stockton, CA 95202-2317
Phone: 209 / 937-8233 • Fax 209 / 937-8558 • www.stocktongov.com

February 3, 2015

Ronny Robinson
620 W. Harding Way
Stockton, CA 95204

Re: *In re City of Stockton, California*, Case No. 2012-32118 (Bankr. E.D. Cal.)

Dear Mr. Robinson,

You are receiving this letter because you have asserted or inquired about a possible claim against the City of Stockton (the "City"). The City is the debtor in a bankruptcy case pending in the United States Bankruptcy Court for the Eastern District of California, Case No. 2012-32118. The bankruptcy case may affect your legal rights. We encourage you to see an attorney regarding your possible claim against the City.

On August 15, 2014, the City served a modified plan of adjustment filed in the bankruptcy case on all claimants and potential claimants. You have been included on the service list and should have received the document (which is lengthy and is on a CD) by now. We encourage you to see an attorney if you have any questions about that legal document.

Sincerely,

Ken Minas
Liability Claims





CITY OF STOCKTON

POLICE DEPARTMENT
22 East Market Street • Stockton, CA 95202-2876
www.stocktongov.com
(209) 937-8697

February 11, 2015

Mr. Ronny Robinson
620 W. Harding Way
Stockton, CA 95204

PERSONNEL COMPLAINT

This letter is to inform you the Professional Standards Section has received and reviewed your complaint (IA 14-55). It was determined the employee involved acted reasonably and within Department policy.

Specific information regarding our investigation as it relates to a personnel matter is confidential as required by law (Penal Code Section 832.7). As such, we are not able to divulge any further information to you regarding your complaint.

ERIC JONES
CHIEF OF POLICE

LIEUTENANT JAMES BALLARD
PROFESSIONAL STANDARDS SECTION

JB:vs

O R R I C K

M E M O R A N D U M

To Stockton creditors, parties with an interest in the City's chapter 9 bankruptcy case, including parties to the City's executory contracts and unexpired leases

FROM Orrick, Herrington & Sutcliffe LLP

DATE February 12, 2015

RE Entry of the Order Confirming the First Amended Plan for the Adjustment of Debts of the City of Stockton, California, as Modified (August 8, 2014)

On February 4, 2015, the Clerk of the United States Bankruptcy Court entered an order (the "Confirmation Order") confirming the City's plan of adjustment filed on August 8, 2014 ("Plan"). Copies of the Plan and the Confirmation Order may be found on the enclosed CD, which also contains copies of the two documents that together constitute the City's Second Supplemental Plan Supplement – a collection of documents reflecting the City's settlements with some of its major creditors. The notice of entry of the Confirmation Order follows below.

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

In re:

CITY OF STOCKTON, CALIFORNIA,

Debtor.

Case No. 2012-32118

Chapter 9

**NOTICE OF ENTRY OF ORDER CONFIRMING FIRST AMENDED PLAN FOR THE
ADJUSTMENT OF DEBTS OF CITY OF STOCKTON, CALIFORNIA, AS MODIFIED
(AUGUST 8, 2014)**

TO ALL CREDITORS, PARTIES IN INTEREST, PARTIES TO THE CITY'S EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on February 4, 2015, the United States Bankruptcy Court for the Eastern District of California entered the Order Confirming First Amended Plan For The Adjustment Of Debts Of City Of Stockton, California, As Modified (August 8, 2014) (the "Order" confirming the "Plan").

PLEASE TAKE FURTHER NOTICE THAT a CD containing a copy of (i) the Order, including its exhibits (one of which is the Plan), and (ii) the City's Second Supplemental Plan Supplement



MEMORANDUM

To Stockton creditors or parties with an interest in the City's chapter 9 bankruptcy case

FROM Orrick, Herrington & Sutcliffe LLP

DATE August 15, 2014

RE First Amended Plan of Adjustment of the City of Stockton, California, as Modified (August 8, 2014)

Due to the partial judgment¹, on June 2, 2014, the City of Stockton revised Franklin's² treatment under the City's proposed plan of adjustment filed in November 2013. In light of the bankruptcy court's July 8, 2014, finding as to the amount of Franklin's secured claim, the City further revised Franklin's treatment in a modified plan filed in the bankruptcy court on August 8, 2014 ("Modified Plan"). The Modified Plan also contains additional, non-substantive revisions. A copy of the Modified Plan may be found on the enclosed CD, along with a redlined version showing the changes from the June 2 version of the plan.

The next hearing in the City's bankruptcy case will be held on October 1 at 10:00 a.m. Judge Klein has indicated that he will rule on all confirmation matters at that hearing. You may attend the October 1 hearing, but are not required to do so. Following the Judge's rulings on October 1, the City may revise the Modified Plan.

Please review the enclosed Modified Plan carefully because, like the November 2013 and June 2 versions, it will impact your rights with respect to any claims you might have against the City.

¹ Partial Judgment in Favor of Plaintiffs, entered April 21, 2014 in the United States Bankruptcy Court for the Eastern District of California, Adversary Case 13-2315 [Adv. Dkt. No. 56].

² Franklin Advisers, Inc., Franklin High Yield Tax-Free Income Fund, and Franklin California High Yield Municipal Fund.



CONFIDENTIAL

December 18, 2014

Ronny Robinson
620 W Harding Way
Stockton, CA 95204

RE: Complaint, No. 15.084, Board Policy 1312.1, Community Relations, Complaints Concerning District Employees

Dear Mr. Robinson:

We received your complaint against Jane Frederick High School, Principal Christopher Anderson. Your complaint is being handled under Board Policy 1312.1, Community Relations, Complaints Concerning District Employees and the related Administrative Regulation. We have assigned your complaint a case number that we ask that you cite when communicating with us.

Your case will be handled by Jeff Keller, Director, Education Services. Mr. Keller may be contacted at 209-933-7115. Please let us know if your phone number or address change. We will treat your complaint confidentially and request that you also refrain from discussing the complaint with others except our staff, or your advisors.

Board Policy prohibits retaliation in any form for the filing of a complaint, the reporting of instances of discrimination or participation in complaint procedures. Such participation shall not in any way affect the status, grades or work assignment of the complainant.

Thank you.

Sincerely,

Sergio E. Betancourt
Compliance Analyst

Copy: Jeff Keller, Director, Education Services
Mark Hagemann, Assistant Superintendent, Education Services

CONFIDENTIAL

January 20, 2015

RE: Case Number 15.084, Board Policy 1312.1, Community Relations, Complaints
Concerning District Employees

Dear Mr. Robinson:

I have completed reviewing the complaint that you filed under the referenced Board Policy against Mr. Chris Anderson. This letter provides you my findings and conclusions and advises you on the appeal procedure.

I reviewed all the available written materials, and I interviewed you and your wife, Mr. Anderson, and witnesses. I have determined that the allegations and gathered evidence **are insufficient** to support a finding that Mr. Anderson acted in a manner inconsistent with his responsibilities as high school principal. Mr. Anderson did not violate any Board Policy, procedures, law or regulation when he called the Stockton Police Department, or when he suspended your daughter for being in violation of her SARB contract. Thank you for your cooperation in this matter.

Board Policy prohibits retaliation in any form for the filing of a complaint, the reporting of instances of discrimination or participation in complaint procedures. Such participation shall not in any way affect the status, grades or work assignment of the complainant or participant.

Should you wish to file an appeal of my findings and conclusions, please contact Compliance Services at 209-933-7100 within 15 calendar days.

Sincerely,



Jeff Keller
Director, Education Services

Copy: Mark Hagemann, Assistant Superintendent, Educational Services

January 27, 2015

To Whom It May Concern

My wife and I, the proud parents of Cara Lynn Robinson, will be appealing Mr. Jeff Keller's decision that Mr. Anderson, Principal at Jane Fredrick allegedly followed school and district policies.

Mr. Jeff Keller Director of Education Services, Concluded that Mr. Anderson did not violate any Stockton Unified School District Policies, and Mr. Anderson followed all the appropriate procedures in regards to the incident that took place On September 18, 2014, Mr. Jeff Keller did not do a thorough investigation. Mr. Jeff Keller stated, he did a complete investigation. While many other students were interviewed by Mr. Jeff Keller, our daughter was never interviewed by Mr. Keller. Currently, we are still waiting for a DUE PROCESS OF THE LAW HEARING. Also, we are still waiting for a written statement about the battery on a Jane Fredrick High School female student; and the theft of the victim's cell phone by my daughter from Mr. Anderson."

Our daughter, Cara Lynn Robinson, a strong, independent, and smart 17 year old female was arrested for supposedly stealing another student's cell phone. A crime she was falsely accused and never convicted.

Cara was called out of class and taken into custody at Jane Fredrick High School on September 18, 2014 two days after the alleged incident took place. Our daughter had to spend four nights and five days inside the San Joaquin County Peterson Juvenile Hall for a crime she had not committed.

Mr. Jeff Keller's, investigation was very biased, prejudiced, and discriminatory. Mr. Jeff Keller never spoke with our daughter at any time in his investigation. So, for him to claim "he had spoken to all the witnesses," is a false statement. She should have been given the opportunity to give her statement about the crime she had been arrested for.

Our complain is that our daughter was mistreated and mishandled on September 18, 2014. When SUSD realized they made a mistake, instead of apologizing, and trying to right this wrong, they tried to sweep the incident under the rug. Cara's rights were violated, her education was put on hold, and her cries of innocence were not heard. As parents, we put our trust in the Stockton Unified School District hands to keep our children safe. Communication with parents is

Our complaint is what happened with my daughter on September 18, 2014 and the way we feel it was inappropriately handled. Cara's rights were violation, education on hold and her voice not heard. As parents, we put out trust in the Stockton Unified School District hands to keep our children's safe. Communication with parents is a huge component and the key to keeping our children on the right track. On September 18, 2014 we were not contacted until Cara Lynn Robinson was already placed into custody and taken to Stockton Juvenile Hall.

We are truly saddened about how the district covers up lying and deceitful behaviors. No one even has a fair chance with these types of individuals. We are thankful for attorneys and judges with their help their help the truth will prevail.

Sincerely,

Ronny Robinson

Carolyn Robinson

January 27th 2015

Ronny Robinson

Carolyn Robinson

Complaint:

20 January 2015

To Whom IT May Concern

Mr. Jeff Keller stated in his report that our daughter had also violated her S.A.R.B. contract we find his statement is simply not true why? There certain procedure that must be followed and enforced through communication which in turn, we were not given the opportunity for an S.A.R.B hearing no notification of any kind regarding the required S.A.R.B. hearing. For example, 1. The S.A.R.B office will then schedule a hearing before a panel and the student and parent are required to attend. We as parent NEVER got the opportunity for any kind of required meeting. 2. Who is on the S.A.R.B. panel? S.A.R.B. Coordinators, Probation Officer, School Police Officer or S.D.P.D, Mental Health staff member, referring school site representative.

From our perspective and understanding as parents what the S.A.R.B. is to help us set up a program designed to meet the needs of students and their family. The ultimate goal is to help students stay in school attend regularity and graduate,

collaborates with school and counselor, recommends placement, connect families with agencies for counseling, tutoring and other services.

What happens in an S.A.R.B.? Hearing. A panel of volunteers examines the situation after listening to the student and parent explain. Why? They are not attending school. Mr. Jeff Keller, stated in his reply to us that we were in violation of the S.A.R.B. why? Didn't we get these available opportunities? Mr. Jeff Keller, Director, Education Service, Mark Hageman, Assistant Superintendent, Education Services, Julie Penn, Stockton Unified School District Superintendent, they all have no evidence that an actual S.A.R.B meeting took place for example when, where, why. They're unanswered question that I and my wife have been trying to get. Since the incident.

Conclusion: The School Attendance Review Board S.A.R.B was established by legislation in California in 1975 for the purpose of. 1. Making a better effort to meet the needs of students with attendance problems in school; and promoting the use of alternative to the juvenile court system. S.A.R.B is specially charged with finding solution to resolve student attendance or discipline problems. 2. S.A.R.B seek to understand why students are experiencing attendances or discipline problems and serve as a vehicle to correct these problems. 3. S.A.R.B survey available community resources, determines the appropriateness of their services to

meet the needs of referred students. And make recommendation for the establishment of new resources or services.

We enclosed a copy of our daughter school progress she was enjoying school for the first time; and head in the right direction her grades were improving and she was very excited in the direction of her educational goals. Our daughter have been out of school since September, 16, 2014, but, she currently on the waiting list at Stockton youth build program to complete her high school diploma. “Without Any Help from the Stockton Unified School District”. “We have no date, or time, location, for this supposed to be S.A.R.B meeting that Mr. Jeff Keller, said had happen; and the matter was resolved. As parents we have no documentation in writing or information that an actual S.A.R.B meeting took place with us involved”.

P.S Thank You.


P.S. Thank you.

Ronny Robinson.

Student Name Robinson, Cara L.				Stockton Unified School District Jane Frederick High School		Jane Frederick High School 1141 E Weber Ave Stockton, CA 95205-4916	
Perm ID 2860353	State ID 2130612805	Grd 12	Gen F				
Date Of Birth 03/04/1997		Phone 209-933-7496		Enter Date 08/22/2002	Leave Date 09/23/2014	Phone 209-933-7340	Fax
Home Address 620 W Harding Wy Stockton, CA 95206				Class of 2015		Counselor Pagnini, Julie	

Crs ID	Course Title	Mark	Cred Att/Cmp	Crs ID	Course Title	Mark	Cred Att/Cmp	Graduation Requirements - Credit Summary				
Stagg High School				Edison High School				Subject Area	Req'd	Compl	Needed	
Yr: 2011	Month: 12	Grade: 09		Yr: 2013	Month: 3	Grade: 10		English	40.00	27.50	12.50	
2414	English 1-2	D-	5.00 / 5.00	2415	English 3-4	D+	5.00 / 5.00	World History	10.00	10.00		
3690	Algebra 1-2	F	5.00 / 0.00	2870	Spanish 1-2	F	5.00 / 0.00	US History	10.00	0.00	10.00	
3905	Exit Exam Math 9	D-	5.00 / 5.00	5692	World History 1-2	D-	5.00 / 5.00	Amer Govt	5.00	0.00	5.00	
5180	Physical Education 1-2	C+	5.00 / 5.00	n9034	Foundational Writing 1-2	F	5.00 / 0.00	Economics	5.00	0.00	5.00	
5380	Integrated Physical Scienc	D-	5.00 / 5.00	Cred Att: 20.00	Cred Cmp: 10.00	GPA: 0.50		Mathematics	20.00	10.00	10.00	
5716	High School Succes 1-2	D-	5.00 / 5.00	Edison High School				Biological Science	10.00	5.00	5.00	
Cred Att: 30.00	Cred Cmp: 25.00	GPA: 1.00		Yr: 2013	Month: 5	Grade: 10		Physical Ed	20.00	5.00	15.00	
Stagg High School				2415	English 3-4	C-	5.00 / 5.00	Wild Lang/V&P Arts/CTE	10.00	10.00		
Yr: 2012	Month: 5	Grade: 09		2870	Spanish 1-2	D-	5.00 / 5.00	Physical Science	10.00	10.00		
2414	English 1-2	F	5.00 / 0.00	5692	World History 1-2	D+	5.00 / 5.00	Electives	70.00	25.00	45.00	
3690	Algebra 1-2	F	5.00 / 0.00	n9034	Foundational Writing 1-2	F	5.00 / 0.00	TOTALS	210.00	102.50	107.50	
3905	Exit Exam Math 9	F	5.00 / 0.00	Cred Att: 20.00	Cred Cmp: 15.00	GPA: 1.00		Graduation Requirements - Test History				
5180	Physical Education 1-2	F	5.00 / 0.00	Jane Frederick High School				Test Name	Admin Dt	Result	Perf Lvl	Score
5380	Integrated Physical Scienc	F	5.00 / 0.00	Yr: 2013	Month: 12	Grade: 11		CAHSEE	03/12/2013	Passed		366
5716	High School Succes 1-2	F	5.00 / 0.00	212200	English 5-6	B+	2.50 / 2.50	^ Edison High School				
Cred Att: 30.00	Cred Cmp: 0.00	GPA: 0.00		222000	Algebra 1-2	D-	2.50 / 2.50	CAHSEM	03/13/2013	Passed		351
Edison High School				227200	Algebra Support 1-2	D	2.50 / 2.50	^ Edison High School				
Yr: 2012	Month: 10	Grade: 10		412300	Law and Society 1-2	B-	2.50 / 2.50					
1434	Computer Ed 1 (business)	B	5.00 / 5.00	Cred Att: 10.00	Cred Cmp: 10.00	GPA: 2.00						
3690	Algebra 1-2	F	5.00 / 0.00	Jane Frederick High School								
5380	Integrated Physical Scienc	D+	5.00 / 5.00	Yr: 2014	Month: 3	Grade: 11						
5390	Biology 1-2	D	5.00 / 5.00	212000	English 1-2	C-	2.50 / 2.50					
Cred Att: 20.00	Cred Cmp: 15.00	GPA: 1.25		212200	English 5-6	D+	2.50 / 2.50					
Edison High School				222000	Algebra 1-2	NM	2.50 / 0.00					
Yr: 2012	Month: 11	Grade: 10		229200	Exit Exam Math Grade 11	C-	2.50 / 2.50					
7075	Health	C+	2.50 / 2.50	262000	Art 1-2	D+	2.50 / 2.50					
Cred Att: 2.50	Cred Cmp: 2.50	GPA: 2.00		Cred Att: 10.00	Cred Cmp: 10.00	GPA: 1.50						
Edison High School				Jane Frederick High School								
Yr: 2012	Month: 12	Grade: 10		Yr: 2014	Month: 6	Grade: 11						
3690	Algebra 1-2	F	5.00 / 0.00	212000	English 1-2	C-	2.50 / 2.50					
5380	Integrated Physical Scienc	D	5.00 / 5.00	212200	English 5-6	D	2.50 / 2.50					
5390	Biology 1-2	F	5.00 / 0.00	229200	Exit Exam Math Grade 11	B-	2.50 / 2.50					
7030	Driver Education	F	2.50 / 0.00	262000	Art 1-2	B+	2.50 / 2.50					
Cred Att: 17.50	Cred Cmp: 5.00	GPA: 0.29		Cred Att: 10.00	Cred Cmp: 10.00	GPA: 2.25						

Transcript is unofficial unless signed by a school official

GPA SUMMARY Total GPA CSU GPA TOT GPA CH 0.90 CSU GPA CH 1.11 UWEG GPA CH 0.90 CAL GRANT CH 1.11		NOTES 08-14-12 Entered Edison HS 10-07-13 Trnsfd from Edison HS 05-20-14 Records sent to: Jane Frederick HS Referred to CWA 9-23-2014				
Enter Date 08/22/2002	Ranked By Total GPA					
Class Rank	Graduation Date					
Class of 2015		Enter Date 08/22/2002	Leave Date 09/23/2014	Class Rank	Graduation Date	Class of 2015

Signature _____

09/24/2015

Jane Frederick High School Christopher Anderson, Principal 1141 E Weber Ave Stockton, CA 95205-4916		Stockton Unified School District 2013-2014		Student Name: Robinson, Cara L.		
				Perm ID: 2860353	Grade: 11	Home Room:

Grade Detail									
Period	Course ID	Course Title	4th Qtr	2nd Sem	Teacher	Cond	WkHbt	ALL ABS	ALL TDY
1	212000	Eng 1-2	C-	C-	Sudderth, B.			8	6
2	262000	Art 1-2	B+	B+	Walsh, R.			3	0
3	212200	Eng 5-6	D	D	Leyva, S.			5	0
4	229200	EE Math Gr 11	B-	B-	Shawver, L.	N	S	3	6

GPA	TOT GPA RP 2.25					
Grade Legend	A+ = Outstanding	A = Outstanding	A- = Outstanding	B+ = Above Average	B = Above Average	B- = Above Average
	C+ = Average	C = Average	C- = Average	D+ = Below Average	D = Below Average	D- = Below Average
	F = Failure	P = Pass	I = Incomplete	W = Withdraw	NC = No Credit	NM = No Mark
	NR = Not Reported	CR = Credit				
Cond Legend	U = Unsatisfactory	O = Outstanding	S = Satisfactory	N = Need Improvement		
WkHbts Legend	U = Unsatisfactory	O = Outstanding	S = Satisfactory	N = Need Improvement		

Jane Frederick High School
 2nd Semester Report Card 2013/2014

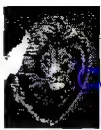
See Reverse Side For Opening Instructions

Jane Frederick High School
 1141 E Weber Ave
 Stockton, CA 95205-4916

PRESORTED
 FIRST CLASS MAIL
 US POSTAGE PAID
 Stockton, CA
 PERMIT NO. 402

RETURN SERVICE REQUESTED

Carolyn/Ronny Robinson
 RE: Robinson, Cara L.
 620 W Harding Wy
 Stockton, CA 95204



Jane Frederick High School

Year: 2014-2015

Case 2:16-cv-02111-MCH Document 1 Filed 09/09/16 Page 82 of 108

Period Student Attendance Profile

Report: ATP 201

Student Information

Student Name (Robinson, Cara L.)	Perm ID 2860353	Gender F	Grade 12	Home Address 620 W Harding Wy Stockton, CA 95206
Last Name Goes By	Nick Name	Birth Date 03/04/1997		
Phone 209-933-7496	Home Language English	Resolved African American	Enter Date 08/12/2014	Leave Date 09/23/2014

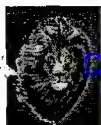
(Robinson, Cara L.)

Custodial Information

Mother Robinson, Carolyn	Phone Type Home	Phone 209-933-7496	Extension Moms Phone
<input checked="" type="checkbox"/> Contact Allowed	<input checked="" type="checkbox"/> Has Custody	<input checked="" type="checkbox"/> Lives With	<input checked="" type="checkbox"/> Ed. Rights
<input checked="" type="checkbox"/> Mailings Allowed			
Father Robinson, Ronny	Phone Type Home	Phone 209-933-7496	Extension Moms Phone
<input checked="" type="checkbox"/> Contact Allowed	<input checked="" type="checkbox"/> Has Custody	<input checked="" type="checkbox"/> Lives With	<input checked="" type="checkbox"/> Ed. Rights
<input checked="" type="checkbox"/> Mailings Allowed			

Attendance By Period

Date	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
08/12/2014 (B)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/13/2014 (C)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/14/2014 (D)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/15/2014 (E)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/18/2014 (F)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/19/2014 (G)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/20/2014 (H)	30T	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/21/2014 (I)	UNX	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/22/2014 (J)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/25/2014 (A)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/26/2014 (B)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/27/2014 (C)	PRE	PRE	UNX	UNX	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/28/2014 (D)	UNX	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/29/2014 (E)	PRE	UNX	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
→ 09/02/2014 (G)	UNX	UNX	UNX	UNX	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/03/2014 (H)	UNX	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/04/2014 (I)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/05/2014 (J)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/08/2014 (A)	UNX	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/09/2014 (B)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/10/2014 (C)	UNX	TOY	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/11/2014 (D)	UNX	UNX	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/12/2014 (E)	PRE	PRE	PRE	UNX	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/15/2014 (F)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/16/2014 (G)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/17/2014 (H)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/18/2014 (I)	PRE	PRE	PRE	UNX	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
→ 09/19/2014 (J)	SUS	SUS	SUS	SUS	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
→ 09/22/2014 (A)	SUS	SUS	SUS	SUS	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/23/2014 (B)	UNX	UNX	UNX	UNX	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
Total	30	30	30	30	0	0	0	0	0	0	0	0	0	0	0



Jane Frederick High School

Period Student Attendance Profile

Year: 2014-2015
Report: ATP201

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Student Information

Student Name (Robinson, Cara L.)	Perm ID 2860353	Gender F	Grade 12	Home Address	
Last Name Goes By	Nick Name	Birth Date 03/04/1997		620 W Harding Wy Stockton, CA 95206	
Phone 209-933-7496	Home Language English	Resolved African American		Enter Date 08/12/2014	Leave Date 09/23/2014

Custodial Information

Mother Robinson, Carolyn	Phone Type Home	Phone 209-933-7496	Extension Moms Phone
<input checked="" type="checkbox"/> Contact Allowed	<input checked="" type="checkbox"/> Has Custody	<input checked="" type="checkbox"/> Lives With	<input checked="" type="checkbox"/> Ed. Rights
<input checked="" type="checkbox"/> Mailings Allowed			
Father Robinson, Ronny	Phone Type Home	Phone 209-933-7496	Extension Moms Phone
<input checked="" type="checkbox"/> Contact Allowed	<input checked="" type="checkbox"/> Has Custody	<input checked="" type="checkbox"/> Lives With	<input checked="" type="checkbox"/> Ed. Rights
<input checked="" type="checkbox"/> Mailings Allowed			

Attendance By Period

Date	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
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(Robinson, Cara L.)

Period Reason Code Type Totals

POS = 90 EXC = 0 UNV = 0 UNE = 28 TDY = 0 ACT = 0
TAR = 2

Period Reason Code Totals

PRE = 90 ISN = 0 UNV = 0 UNX = 20 PER = 0 ACT = 0
RUN = 0 ISS = 0 EXC = 0 JUS = 0 TST = 0 MED = 0
FNR = 0 HDL = 0 FTP = 0 TDY = 1 ISA = 0 NSS = 0
ILL = 0 OTH = 0 ADM = 0 ESU = 0 SUS = 8 SAT = 0
30T = 1 CUT = 0

Reason Code Legend

PRE = Present	ISN = Ind Study	UNV = Unverified	UNX = Unexcused	PER = Permitted	ACT = Activity
RUN = Runaway	ISS = InSch Sus	EXC = Excused	JUS = Justified	TST = Testing	MED = Med Dr Excuse
FNR = Funeral	HDL = Headlice	FTP = Field Trip	TDY = Tardy	ISA = Ind Study A	NSS = NoShow ISS
ILL = Illness	OTH = Other	ADM = Admin Counselo	ESU = Expulsion	SUS = Suspended	SAT = Sat School
30T = 30 Min Tdy	CUT = Truant	N/S = Not Scheduled			



Stockton High School

22 South Van Buren Street
Stockton, CA 95203
Phone: (209) 933-7365 Fax:
(209) 465-5822

December 8, 2014

To Whom It May Concern,

On October 20, 2014 I enrolled Cara Robinson #2860353. I was unaware that Cara was referred to the County by Child Welfare and Attendance. On October 24th I received a call from Child Welfare and Attendance, notifying me that Cara had been referred to the county and I should not have enrolled her. I dropped Cara on October 24th. During her enrollment at Stockton High, Cara missed 3 days of school due to either not attending or submitting work.

If you have further questions or need more information, please do not hesitate to contact me at (209)933-7365.

Sincerely,

A handwritten signature in cursive script that reads "Elena Cebreros".

Elena Cebreros
Student Data Technician
Stockton High School

From: Dee Alimbini
Sent: Friday, December 05, 2014 12:15 PM
To: Ronny Robinson
Cc: Monique Castellon
Subject: RE: Mr. Robinson.

Hi, Mr. Robinson,

I called the number you left and had a nice conversation with your wife. I am not sure if you were able to talk to her after I talked to her. We left it at the three of you would talk this over the weekend and she would call me on Monday morning to let me know what you all want to do. I explained that the one program has a business academy and she said Cara was interested in the field of law and that Stockton High will happily take her (I spoke to Ms. Santella this morning)

Part of the mix up was that when I authorized the drop from Jane Frederick and referral to County, Julie Penn was also working with you-hence the Stockton High referral. We were both unaware of the other's work with your family. Our most important goal here is that Cara get her diploma or the High School Proficiency certificate she wants. In order to qualify for that proficiency test, she has to be enrolled in a school.

I apologize for the confusion and please be assured that I am working to make sure Cara gets enrolled and gets on with her future.....I understand you have older kids in college so she has good role models to look to, besides her mom and dad. I appreciate your advocacy on behalf of your daughter-I wish more parents were as involved ☺.

We will talk Monday morning and get this ball in motion. Have a good weekend.

Regards,

Dee Alimbini

Dee Alimbini
Director, Student Support Services
Child Welfare and Attendance
Custodian of Student Records
Foster Youth Liaison
Stockton Unified School District
1144 E. Channel Street
Stockton, CA 95205
209 933-7020, extension 1351

my daughter was dropped November 12, 2014
from Stockton High School. and not Jane Frederick
High School.
[check how work]

Ronny Robinson

Carolyn Robinson

Stockton High School

8 October 2014

To Whom It May Concern

On October 20, 2014 I enrolled Cara Lynn Robinson #2860353. On October 24th the principle dropped my daughter from Stockton High School. Just like that again our daughter called me carrying stating the school principle had to expel from the school for no apparent reasons she couldn't understand. The school principle stated that our daughter only attended they're school for only four days and missed three of school due to either not attending or submitting work.

We have clear documentation showing that are daughter was doing very well considering all mass she just came through. Such as our daughter homework all the way to the 11-12-2014. We tried to explain the situation that Cara Lynn Robinson, attended the school every day. Also, to make matter worst the school principle refused to speak with us like Mr. Anderson at Jane Fredrick High School.

Enclosed is are daughter homework before she was expelled/ suspense, again. With no parent principle meeting nothing. No expulsion hearing nothing just straight put our daughter education on hold. And to make matter even worst they refused to give me and my an actual record of her attendance there at Stockton High School.

P.S. Thank You!

BIOLOGY 2 ASSIGNMENT SHEET

Name (on line)

Date

Points

Chapter 10	Section Assessment: 1(#1-3), 2(#1-3), 3(#1-4), 4(#1-3), 5(#1-3) Chapter Assessment 1-10, Standards Based Assessment 1-6 TEST		116
			116
			125
		Total points	157
Chapter 11	Section Assessment: 1(#1-3), 2(#1-2), 3(#1-3), 4(#1-4), 5(#1-3), 6(#1-4) Chapter Assessment 1-12, Standards Based Assessment 1-6 TEST	10/27	119
		10/28	118
			125
		Total points	162
Chapter 13	Section Assessment: 1(#1-3), 2(#1-2), 3(#1-3), 4(#1-3), 5(#1-2), 6(#1-3) Chapter Assessment 1-9, Standards Based Assessment 1-6 TEST		116
			115
			125
		Total points	156
Chapter 14	Section Assessment: 1(#1-3), 2(#1-3), 3(#1-3), 4(#1-3), 5(#1-3) Chapter Assessment 1-9, Standards Based Assessment 1-6 TEST		115
			115
			125
		Total points	155
Chapter 15	Section Assessment: 1(#1-3), 2(#1-3), 3(#1-4), 4(#1-2), 5(#1-4) Chapter Assessment 1-12, Standards Based Assessment 1-6 TEST		116
			118
			125
		Total points	159
Chapter 16	Section Assessment: 1(#1-4), 2(#1-3), 3(#1-2), 4(#1-3), 5(#1-4) Chapter Assessment 1-10, Standards Based Assessment 1-6 TEST		116
			116
			125
		Total points	157
Chapter 28	Section Assessment: 1(#1-3), 2(#1-3), 3(#1-3) Chapter Assessment 1-12, Standards Based Assessment 1-6 TEST		119
			118
			115
		Total points	142
Chapter 29	Section Assessment: 1(#1-3), 2(#1-2), 3(#1-3), 4(#1-3), 5(#1-3), 6(#1-5) Chapter Assessment 1-10, Standards Based Assessment 1-6 TEST		119
			116
			125
		Total points	160
Chapter 30	Section Assessment: 1(#1-4), 2(#1-2), 3(#1-2), 4(#1-3), 5(#1-3), 6(#1-3) Chapter Assessment 1-12, Standards Based Assessment 1-6 TEST		117
			118
			125
		Total points	160
Chapter 31	Section Assessment: 1(#1-3), 2(#1-3), 3(#1-4), 4(#1-3), 5(#1-3), 6(#1-2) Chapter Assessment 1-9, Standards Based Assessment 1-6 TEST		118
			115
			125
		Total points	158

Start Date 10/27

Completion Date

Points Earned

Points Possible

Percentage

Letter Grade

Credits Earned

--	--	--	--	--

11/7/14

Biology 2

Tanaza*

"The Biosphere"

15.1 (1-3)

1. The relationship between the biota and the biosphere is that the biosphere includes living organisms and the land, air, and water so the collection of living things in the biosphere is the biota.

2. The Gaia hypothesis explain the interaction between biotic and abiotic factors by saying this hypothesis considers Earth a kind of living organism, its atmosphere, geosphere and hydrosphere are cooperating systems that yield a biosphere full of life.

?

3) If a frog jumped in a pond and its skin absorbs the water the water has moved through geosphere.

15.2

1. The difference between climate and weather is the long term pattern of weather. Then weather on the other hand is basically the temperature of something.

2. The three different climate zones are temperature, sunlight, water and also wind.

3. There might be microclimates

11/7/14

61010912

Standard Based Assessment (1-6)

1) B

2) A

3) D

4) A

5) A

6) D

Chapter 14

Cara Robinson

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B1010672

14.1 (1-3)

1. The three parts of an organisms ecological niche are food, abiotic conditions and behavior.

2. The principle of competitive exclusion says when two species compete for the same resource one species will be better suited to the niche.

3. If a group of mantella frogs were transported to the ecosystem of the dart frogs the two species population may be affected because by them living in different regions of the world they never compete for the same resources.

14.2 (1-3)

1. During the fall spawning of salmon grizzly bears fight over space on the river banks this type of act is competition.

2. Three types of symbiosis: Mutualism, commensalism, and parasitism. Mutualism is a interspecies interaction in which both organisms benefit from one another, Commensalism is a relationship between two organisms, and parasitism is a relationship similar to predation, its a symbiotic relationship involving a species that directly harms its host.

3. Predation and Parasitism are similar cause they both are a process by which they kill their prey, they differ by how they keep their host alive.

Cara Robinson

Tenaza*

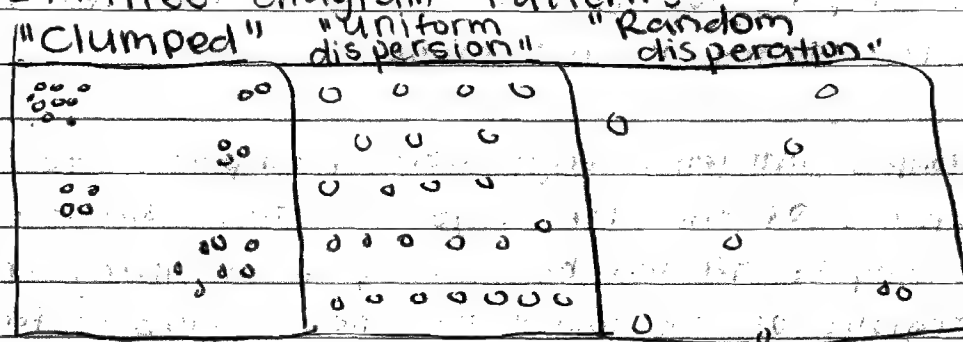
11/6

Biology 2

11.3 (1-3)

1. A shoreline mussel species has a population density and all mussels would be found one meter apart, because spread in a grid or a volume.

2. Three diagram Patterns



3. Survivorship curves show three types of reproductive strategies as they're "Type I" which shows a low level of infant mortality and a population that generally will survive until old age. Type II such as birds, small mammals, and some reptiles show a survivorship rate that is roughly equal at all ages of an organism's life. Type III species survivorship are generally invertebrates, fish, amphibians, and plants.

14.8 (1-3)

1. Four factors that determine the growth rate of population is immigration, Births, Emigration, Deaths.

2. Carrying capacity affects the size of population by being able to change when the environment changes.

3. The main difference between DDLF and DILF is that DDLF has limited factors unlike DILF which limit a population's growth.

14.5 (1-3)

1. Primary succession is different from secondary succession simply because primary is the establishment and development of an ecosystem, unlike the secondary which is the reestablishment of a damaged ecosystem.

2. Pioneer species are important for primary succession because pioneer species are lichens and some mosses, which can break down solid rock into smaller pieces. The process of primary succession,

3. The process of primary succession takes longer in arctic area because it's nothing like a tropical where the soil continues to grow thicker.

Chapter Assessment (1-9)

(8-1) 2.PT

- 1) Two-way benefit; two species; mutualism
- 2) Host of harmed; Evolution; organism that feed off,
- 3) No effect on host; Abstract; Co-evolution
- 4) a herd;
- 5) no pattern; dispersion; or scattering,
- 6) Territories; behaviour; boundaries
- 7) rapid growth;
- 8) Sudden decrease in size;
- 9) Number environment can sustain;

(P-1) 1/19/16 2:22 PM
14.5 (1-3)

1. Primary succession is different from secondary succession simply because primary is the establishment and development of an ecosystem, unlike the secondary which is the reestablishment of a damaged ecosystem.

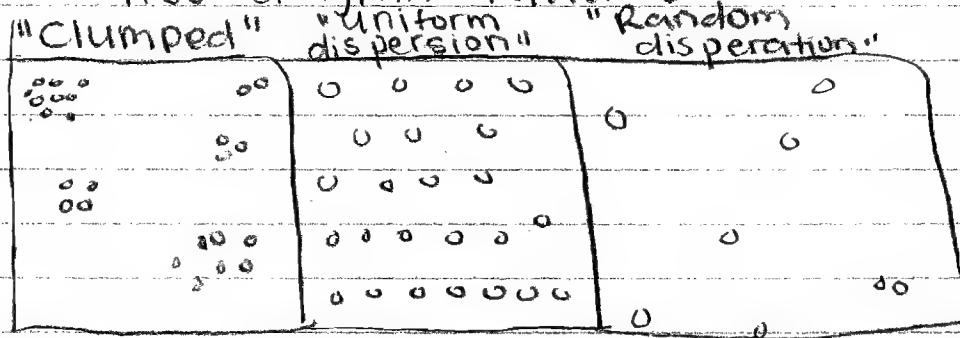
2. Pioneer species are important for primary succession because pioneer species are lichens and some mosses, which can break down solid rock into smaller pieces. The process of primary succession,

3. The process of primary succession takes longer in arctic area because it's nothing like a tropical where the soil continues to grow thicker.

14.3 (1-3)

1. A shoreline mussel species has a population density and all mussels would be found one meter apart, because spread in a area or a volume.

2. Three diagram Patterns



3. Survivorship curves show three types of reproductive strategies as they're "Type I" which shows a low level of infant mortality and a population that generally will survive until old age. Type II such as birds, small mammals, and some reptiles show a survivorship rate that is roughly equal at all ages of an organism's life. Type III species survivorship are generally invertebrates, fish, amphibians, and plants.

14.4 (1-3)

1. Four factors that determine the growth rate of population is immigration, Births, Emigration, Deaths.

2. Carrying capacity affects the size of population by being able to change when the environment changes.

3. The main difference between DDLF and DILF is that DDLF has limited factors unlike DILF which limit a population's growth.

Jane Frederick High School Christopher Anderson, Principal 1141 E Weber Ave Stockton, CA 95205-4916		Stockton Unified School District 2013-2014		Student Name: Robinson, Cara L.		
				Perm ID: 2860353	Grade: 11	Home Room:

Grade Detail									
Period	Course ID	Course Title	4th Qtr	2nd Sem	Teacher	Cond	WkHbt	ALL ABS	ALL TDY
1	212000	Eng 1-2	C-	C-	Sudderth, B.			8	6
2	262000	Art 1-2	B+	B+	Walsh, R.			3	0
3	212200	Eng 5-6	D	D	Leyva, S.			5	0
4	229200	EE Math Gr 11	B-	B-	Shawver, L.	N	S	3	6

GPA	TOT GPA RP 2.25					
Grade Legend	A+ = Outstanding	A = Outstanding	A- = Outstanding	B+ = Above Average	B = Above Average	B- = Above Average
	C+ = Average	C = Average	C- = Average	D+ = Below Average	D = Below Average	D- = Below Average
	F = Failure	P = Pass	I = Incomplete	W = Withdraw	NC = No Credit	NM = No Mark
	NR = Not Reported	CR = Credit				
Cond Legend	U = Unsatisfactory	O = Outstanding	S = Satisfactory	N = Need Improvement		
WkHbts Legend	U = Unsatisfactory	O = Outstanding	S = Satisfactory	N = Need Improvement		

Jane Frederick High School
 2nd Semester Report Card 2013/2014

See Reverse Side For Opening Instructions

Jane Frederick High School
 1141 E Weber Ave
 Stockton, CA 95205-4916

PRESORTED
 FIRST CLASS MAIL
 US POSTAGE PAID
 Stockton, CA
 PERMIT NO. 402

RETURN SERVICE REQUESTED

Carolyn/Ronny Robinson
 RE: Robinson, Cara L.
 620 W Harding Wy
 Stockton, CA 95204



Jane Frederick High School

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Year: 2014-2015

Report: ATP 201

Period Student Attendance Profile

Student Information

Student Name (Robinson, Cara L.)	Perm ID 2860353	Gender F	Grade 12	Home Address 620 W Harding Wy Stockton, CA 95206
Last Name Goes By	Nick Name	Birth Date 03/04/1997		
Phone 209-933-7496	Home Language English	Resolved African American	Enter Date 08/12/2014	Leave Date 09/23/2014

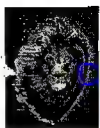
Custodial Information

Mother Robinson, Carolyn	Phone Type Home	Phone 209-933-7496	Extension Moms Phone
<input checked="" type="checkbox"/> Contact Allowed	<input checked="" type="checkbox"/> Has Custody	<input checked="" type="checkbox"/> Lives With	<input checked="" type="checkbox"/> Ed. Rights
<input checked="" type="checkbox"/> Mailings Allowed			
Father Robinson, Ronny	Phone Type Home	Phone 209-933-7496	Extension Moms Phone
<input checked="" type="checkbox"/> Contact Allowed	<input checked="" type="checkbox"/> Has Custody	<input checked="" type="checkbox"/> Lives With	<input checked="" type="checkbox"/> Ed. Rights
<input checked="" type="checkbox"/> Mailings Allowed			

Attendance By Period

Date	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
08/12/2014 (B)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/13/2014 (C)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/14/2014 (D)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/15/2014 (E)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/18/2014 (F)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/19/2014 (G)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/20/2014 (H)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/21/2014 (I)	UNX	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/22/2014 (J)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/25/2014 (A)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/26/2014 (B)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/27/2014 (C)	PRE	PRE	UNX	UNX	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/28/2014 (D)	UNX	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
08/29/2014 (E)	PRE	UNX	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
→ 09/02/2014 (G)	UNX	UNX	UNX	UNX	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/03/2014 (H)	UNX	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/04/2014 (I)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/05/2014 (J)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/08/2014 (A)	UNX	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/09/2014 (B)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/10/2014 (C)	UNX	TDY	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
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09/12/2014 (E)	PRE	PRE	PRE	UNX	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/15/2014 (F)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/16/2014 (G)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/17/2014 (H)	PRE	PRE	PRE	PRE	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/18/2014 (I)	PRE	PRE	PRE	UNX	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
→ 09/19/2014 (J)	SUS	SUS	SUS	SUS	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
→ 09/22/2014 (A)	SUS	SUS	SUS	SUS	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
09/23/2014 (B)	UNX	UNX	UNX	UNX	N/S	N/S	N/S	N/S	N/S	N/S	N/S	-	-	-	-
Total	30	30	30	30	0	0	0	0	0	0	0	0	0	0	0

(Robinson, Cara L.)



Jane Frederick High School

Year: 2014-2015

Case 2:16-cv-02113-JIM-C3H Document 1 Filed 09/09/16 Page 98 of 108

Period Student Attendance Profile

Report: ATP 201

(Robinson, Cara L.)

Student Information

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Mother Robinson, Carolyn	Phone Type Home	Phone 209-933-7496	Extension Moms Phone
<input checked="" type="checkbox"/> Contact Allowed	<input checked="" type="checkbox"/> Has Custody	<input checked="" type="checkbox"/> Lives With	<input checked="" type="checkbox"/> Ed. Rights
<input checked="" type="checkbox"/> Mailings Allowed			
Father Robinson, Ronny	Phone Type Home	Phone 209-933-7496	Extension Moms Phone
<input checked="" type="checkbox"/> Contact Allowed	<input checked="" type="checkbox"/> Has Custody	<input checked="" type="checkbox"/> Lives With	<input checked="" type="checkbox"/> Ed. Rights
<input checked="" type="checkbox"/> Mailings Allowed			

Attendance By Period

Date	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
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Period Reason Code Type Totals

POS = 90 EXC = 0 UNV = 0 UNE = 28 TDY = 0 ACT = 0
TAR = 2

Period Reason Code Totals

PRE = 90 ISN = 0 UNV = 0 UNX = 20 PER = 0 ACT = 0
RUN = 0 ISS = 0 EXC = 0 JUS = 0 TST = 0 MED = 0
FNR = 0 HDL = 0 FTP = 0 TDY = 1 ISA = 0 NSS = 0
ILL = 0 OTH = 0 ADM = 0 ESU = 0 SUS = 8 SAT = 0
30T = 1 CUT = 0

Reason Code Legend

PRE = Present	ISN = Ind Study	UNV = Unverified	UNX = Unexcused	PER = Permitted	ACT = Activity
RUN = Runaway	ISS = InSch Sus	EXC = Excused	JUS = Justified	TST = Testing	MED = Med Dr Excuse
FNR = Funeral	HDL = Headlice	FTP = Field Trip	TDY = Tardy	ISA = Ind Study A	NSS = NoShow ISS
ILL = Illness	OTH = Other	ADM = Admin Counselo	ESU = Expulsion	SUS = Suspended	SAT = Sat School
30T = 30 Min Tdy	CUT = Truant	N/S = Not Scheduled			

From: Dee Alimbini
Sent: Friday, December 05, 2014 12:15 PM
To: Ronny Robinson
Cc: Monique Castellon
Subject: RE: Mr. Robinson.

Hi, Mr. Robinson,

I called the number you left and had a nice conversation with your wife. I am not sure if you were able to talk to her after I talked to her. We left it at the three of you would talk this over the weekend and she would call me on Monday morning to let me know what you all want to do. I explained that the one program has a business academy and she said Cara was interested in the field of law and that Stockton High will happily take her (I spoke to Ms. Santella this morning)

Part of the mix up was that when I authorized the drop from Jane Frederick and referral to County, Julie Penn was also working with you-hence the Stockton High referral. We were both unaware of the other's work with your family. Our most important goal here is that Cara get her diploma or the High School Proficiency certificate she wants. In order to qualify for that proficiency test, she has to be enrolled in a school.

I apologize for the confusion and please be assured that I am working to make sure Cara gets enrolled and gets on with her future.....I understand you have older kids in college so she has good role models to look to, besides her mom and dad. I appreciate your advocacy on behalf of your daughter-I wish more parents were as involved ☺.

We will talk Monday morning and get this ball in motion. Have a good weekend.

Regards,

Dee Alimbini

Dee Alimbini
Director, Student Support Services
Child Welfare and Attendance
Custodian of Student Records
Foster Youth Liaison
Stockton Unified School District
1144 E. Channel Street
Stockton, CA 95205
209 933-7020, extension 1351

Mrs. Dee Alimbini Called Stockton High School
on November 12, 2014. To have our daughter dropped
from school.

To Whom It May Concern

To read this letter from the Child Welfare
and attendance Custodian of Student Records
Joker Youth Division.

We were very sad? Because if everything
could have went through the right channels
the first time (Mrs. Dee Alimbini) wouldn't have
to apologize to some one's else ^{non-} professionalism.

Calling over to Stockton High School
November 12, 2014. To have our daughter dropped
education on hold is un-acceptable.

The truth of the matter. If our daughter
could have gotten a due process hearing, or
parent-consultant-principal conference regarding
the goals of our child this could have been
all avoided.

On the other hand we tried to make
contact with Mrs. Dee Alimbini but to no
avail. We needed to know why? she did
what she did because ~~nothing~~ ^{it} affected our
daughter educational goals.

~~Our daughter didn't make it to her
graduation and back to school~~

part 3



Stockton High School

22 South Van Buren Street
Stockton, CA 95203
Phone: (209) 933-7365 Fax:
(209) 465-5822

December 8, 2014

To Whom It May Concern,


On October 20, 2014 I enrolled Cara Robinson #2860353. I was unaware that Cara was referred to the County by Child Welfare and Attendance. On October 24th I received a call from Child Welfare and Attendance, notifying me that Cara had been referred to the county and I should not have enrolled her. I dropped Cara on October 24th. During her enrollment at Stockton High, Cara missed 3 days of school due to either not attending or submitting work.

If you have further questions or need more information, please do not hesitate to contact me at (209)933-7365.

Sincerely,

Elena Cebrenos

Elena Cebrenos
Student Data Technician
Stockton High School

Please Read attached 
Document - 1

Before we had enrolled our daughter at Stockton High School. We had to participate in the family required orientation presentation given by the school principal Mrs. Maryann Stantella.

Regarding the required rules and regulation in order to be an successful student here at Stockton High School.

On October 20th 2014 we decided to enrolled our daughter at Stockton High School why? Our daughter education has been on hold since 09-18-2014.

Jane Fredrick High School. Mr. Chris Anderson principal. Refused to give us any kind of Due process hearing or parent-counselor-principal conference not even a actual referral from Child Welfare and attendone. **NOTHING!** Our daughter have been suspended, expelled, no expulsion hearing just put out of Jane Fredrick High School, for a crime we hadn't committed.

On November 12th 2014 our daughter Cara Lynn Robinson called home crying. Whats Wrong Cara? "Stockton High School principal and the Student Data Technician called her out of class to inform her that she can no longer attend Stockton High School. Cara then asked Mrs. Maryann Stantella why? she could no longer attend the school. She responded by saying "Because of the part incident that occurred at Jane Fredrick High School."

Once again our daughter's educational opportunity to play back on hold for the second time just like that put-out, without an Due Process Hearing or parent-counselor-principal conference of any kind.

We are the proud parents of Carz Lynn Robinson. They refused to give us a fair explanation to this, ~~that~~^{impudence} our daughter have been experiencing since her false arrest on 09-18-2014.

09-18-2015 Mr. Anderson called our daughter out of class and had her arrested, for an incident that occurred on 09-16-2014.

The Stockton High School principal Mrs. Maryann Stantilla and the Student Data Technician Mrs. Elena Cebaleros.

Wrote some falsify and misrepresentation important negative information on a Stockton Unified School District letter head.

They were quoted saying.

¹² On October 20th 2014 I enrolled Carz Robinson #2860353 I was unaware that Carz was referred to the county by Child Welfare and attendance.

On October 24th I received a call from Child Welfare and Attendance, notifying "me" that Carz had been referred to the county one and I should not have enrolled her. I dropped Carz on October 24th. During her enrollment at Stockton High School, Carz missed (31) days of school due to either not attending or submitting

Work.

Our information we have gathered is much different. Regarding our daughter only attending Stockton High School for only (4) days and absent (3) days. Leaving our daughter to have only attended Stockton High School for only (1) day is simply not true. Why?

We have attached a copy of our daughter start date 10-27-2014. Including completed assignments from 11-5-2014, 11-6-2014, 11-7-2014.

To make matters worst Mrs. Maryann Stentille informed all of our daughter teachers to not accept Cora Lynn Robinson completed assignments; and remove her from they're attendance roster. And don't give her no credit for the work she completed. And that's exactly what happen. Read Attached Assignment →

Another key factor component the Dates such as

Dr. Ron R.

To Whom It May Concern

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and attendance custodian of Student Records
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Joe Ron R

1 DEL RIO & CARICHOFF, P.C.
2 Robert A. Carichoff (SBN 211066)
3 Daniel R. Del Rio (SBN 237968)
4 777 Campus Commons Road, Suite 200
5 Sacramento, California 95825
6 Telephone: (916) 378-4705
7 Facsimile: (916) 378-4706

8 Attorneys for Plaintiff

FILED
SUPERIOR COURT - STOCKTON

2016 SEP 19 PM 1:51

ROSA JUNQUEIRO, CLERK

Donna Edwards
DEPUTY

#435
#103552

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

TAMMY BRAXTON,

Plaintiff,

vs.

CITY OF STOCKTON, STOCKTON
POLICE DEPARTMENT, and DOES 1
through 20,

Defendants.

Case No.: STK-CV- 441 -2016- 9386

COMPLAINT

Jury Trial Requested

THIS CASE HAS BEEN ASSIGNED TO JUDGE
BARBARA A. KRONLUND IN DEPARTMENT 42
FOR ALL PURPOSES, INCLUDING TRIAL

Plaintiff TAMMY BRAXTON ("Plaintiff") complains against Defendants CITY OF
STOCKTON, STOCKTON POLICE DEPARTMENT, and DOES 1 through 20
("Defendants") alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff is now, and at all times herein mentioned was, a citizen of and resident
within the County of San Joaquin, State of California. On information and belief, Defendant
CITY OF STOCKTON is a public entity whose primary place of business is in the County of
San Joaquin, State of California. On information and belief, Defendant STOCKTON POLICE
DEPARTMENT is a public entity whose primary place of business is in the County of San
Joaquin, State of California. The amount in controversy is in excess of the minimal
jurisdictional limits of this Court.

2. The true names and capacities -- whether individual, corporate, associate or

1 otherwise -- of Defendants DOES 1 through 20, are unknown to Plaintiff, who therefore sues
2 such DOES by such fictitious names. Plaintiff will amend this Complaint to show their true
3 names and capacities when the same have been ascertained. Each of the Defendants, and DOES
4 1 through 20, are legally responsible in some manner -- negligently, in warranty, strictly, or
5 otherwise -- for the incident that is the subject of this Complaint.

6 3. Plaintiff caused a written Claim for Personal Injuries to be served on Defendants
7 on February 4, 2016. This claim was rejected by operation of law on March 21, 2016. Plaintiff
8 has complied with all applicable Government Code claims procedures.

9 4. Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT,
10 and DOES 1 through 10 are liable to Plaintiff for the negligence of Defendants CITY OF
11 STOCKTON, STOCKTON POLICE DEPARTMENT, and DOES 11 through 20 within the
12 course and scope of the latter's employment and/or agency, by virtue of Government Code
13 Section 815.2. All Defendants are liable to Plaintiff for their negligence, pursuant to
14 Government Code Section 820. Defendants CITY OF STOCKTON, STOCKTON POLICE
15 DEPARTMENT, and DOES 1 through 20 are also responsible to Plaintiff pursuant to California
16 Civil Code section 3342.

17 FIRST CAUSE OF ACTION

18 (Dog Bite: Strict Liability)

19 5. Plaintiff is informed and believes and thereon alleges, that at all times herein
20 mentioned, Defendants and DOES 1 through 20, and each of them, were the owners and
21 controllers of a dog/K-9 known as "Roscoe". (Hereinafter, "SUBJECT DOG".)

22 6. Plaintiff alleges that the SUBJECT DOG owned and controlled by Defendants
23 and DOES 1 through 20, and each of them, was of a vicious disposition and possessed
24 dangerous propensities and was likely to attack and injure human beings.

25 7. Plaintiff further alleges that at all times herein mentioned, Defendants and
26 DOES 1 through 20, prior to December 30, 2015, knew or should have known that the
27 SUBJECT DOG was of a vicious disposition and possessed dangerous propensities and was
28 likely to attack and injure human beings.

1 8. On or about December 30, 2015, Plaintiff was lawfully on her property located
2 at 2665 Burlington Avenue, Stockton, CA 95209, when SUBJECT DOG got out of a police
3 vehicle, walked on to Plaintiff's driveway/garage, and bit Plaintiff on the left leg and left arm,
4 thereby causing injury and damages to Plaintiff.

5 9. The bite to Plaintiff by SUBJECT DOG did cause injury to Plaintiff and was a
6 substantial factor in causing injury to Plaintiff which required medical treatment.

7 10. Plaintiff further alleges that Defendants and DOES 1 through 20 are liable as the
8 owners and/or controllers of the SUBJECT DOG which bit Plaintiff causing injury to Plaintiff,
9 and as such, are strictly liable for the injuries and damages of Plaintiff resulting therefrom
10 pursuant to Civil Code section 3342.

11 11. As a result of the negligence of Defendants, Plaintiff suffered personal / bodily
12 injuries, resulting in economic and non-economic damages. Economic damages include, but
13 are not limited to, (1) past and future medical and/or ancillary related expenses, (2) past and
14 future income and/or earning capacity loss, (3) loss of ability to provide household services,
15 and (4) incidental and consequential damages and/or property damage and loss of use. Non-
16 economic damages include, but are not limited to (1) past and future physical and mental
17 suffering, (2) loss of enjoyment of life, (3) physical impairment, (4) inconvenience, (5) anxiety,
18 and (6) emotional distress.

19 Plaintiff prays for judgment against Defendants for:

- 20 a. Non-economic damages in excess of the jurisdictional limit of this Court;
21 b. All medical and incidental expenses according to proof;
22 c. All loss of earnings according to proof;
23 d. Punitive damages;
24 e. Prejudgment interest to the extent permitted by law;
25 f. All costs of suit; and
26 g. Such other and further relief as this Court may deem just and proper.

27 **SECOND CAUSE OF ACTION**

28 **(Dog Bite: Negligence)**

1 As a separate second cause of action, Plaintiff, complains against Defendants and DOES
2 1 through 11, and alleges as follows:

3 12. Plaintiff incorporates herein by reference each and every allegation in the first
4 cause of action as though fully set forth herein.

5 13. Prior to December 30, 2015, Defendants and DOES 1 through 20 were aware
6 that the SUBJECT DOG possessed dangerous propensities and that it was likely to attack and
7 injure human beings. Defendants and DOES 1 through 20, and each of them, were at all times
8 herein mentioned aware of these traits.

9 14. Plaintiff further alleges that Defendants and DOES 1 through 20, and each of
10 them, negligently owned, managed, controlled, and/or maintained the police car, so as to allow
11 the SUBJECT DOG to get loose and attack/bite the Plaintiff.

12 15. Plaintiff further alleges that Defendants and DOES 1 through 20, and each of
13 them, negligently failed to properly manage, control, and otherwise restrain the SUBJECT
14 DOG to prevent it from escaping the police car, to prevent it from trespassing onto Plaintiff's
15 property, and to prevent it from attacking/biting Plaintiff.

16 16. As a result of the negligence of Defendants, Plaintiff suffered personal / bodily
17 injuries, resulting in economic and non-economic damages. Economic damages include, but
18 are not limited to, (1) past and future medical and/or ancillary related expenses, (2) past and
19 future income and/or earning capacity loss, (3) loss of ability to provide household services,
20 and (4) incidental and consequential damages and/or property damage and loss of use. Non-
21 economic damages include, but are not limited to (1) past and future physical and mental
22 suffering, (2) loss of enjoyment of life, (3) physical impairment, (4) inconvenience, (5) anxiety,
23 and (6) emotional distress.

24 Plaintiff prays for judgment against Defendants for:

- 25 a. Non-economic damages in excess of the jurisdictional limit of this Court;
26 b. All medical and incidental expenses according to proof;
27 c. All loss of earnings according to proof;
28 d. Prejudgment interest to the extent permitted by law;

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- e. All costs of suit; and
- f. Such other and further relief as this Court may deem just and proper.

Dated: September 19, 2016

DEL RIO & CARICHOFF, P.C.

By: 
DANIEL R. DEL RIO
Attorneys for Plaintiff

1 Douglas R. Thorn (CA Bar No. 133521)
THORN LAW FIRM
2 Olympus Corporate Center
3017 Douglas Boulevard, Suite 300
3 Roseville, California 95661
Telephone – (916) 768-9311
4 Email – doug@thornlawfirm.org

5 Attorneys for Plaintiffs

6

7

UNITED STATES DISTRICT COURT

8

EASTERN DISTRICT OF CALIFORNIA

9

10 Sonny Martinez; Jessica Martinez,
11 individually and as the mother and
Guardian Ad Litem for minors VJM,
12 GRM, ARM, and EVM; and Joann
Ramirez,

13 Plaintiffs,

14 v.

15 City of West Sacramento; West
Sacramento Police Department; Jason
16 M. Winger; David M. Stallions; Michael
Duggins; Kenneth E. Fellows; Carl J.
17 Crouch; Eric M. Palmer; Matthew S.
Luiz; Louis Cameron; West Sacramento
18 Doe 1 through 25; City of Stockton;
Stockton Police Department; Dan T.
19 Zwicky; Stockton Doe 26 through 50;
Rafael Altamirano; and Doe 51 through
20 100,

21 Defendants.

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Case No.

COMPLAINT AND DEMAND FOR
JURY TRIAL

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs demand a jury trial and allege:

3 **JURISDICTION AND VENUE**

4 1. This Court has federal question jurisdiction under 28 U.S.C. § 1331
5 because this case arises under the Constitution and laws of the United States and is
6 brought under 42 U.S.C. § 1983 to redress the deprivation of the plaintiffs'
7 constitutional rights under color of state law.

8 2. This Court has civil rights jurisdiction under 28 U.S.C. § 1343 because
9 this case is brought under 42 U.S.C. § 1983 to redress the deprivation of the plaintiffs'
10 constitutional rights under color of state law.

11 3. This Court has supplemental jurisdiction under 28 U.S.C. § 1367
12 because the plaintiffs' state law claims are so related to their claims within the
13 original jurisdiction of this Court that they form part of the same case or controversy
14 under Article III of the Constitution of the United States.

15 4. Venue lies in this judicial district under 28 U.S.C. § 1391(b)(1) because
16 every defendant resides in this judicial district.

17 5. Venue lies in this judicial district under 28 U.S.C. § 1391(b)(2) because
18 all of the events and omissions giving rise to the plaintiffs' claims occurred in San
19 Joaquin and Yolo counties in this judicial district.

20 6. Intra-district venue lies in Sacramento under Local Rule 120(d) because
21 this case arose in San Joaquin and Yolo counties.

22 **GOVERNMENT CLAIM**

23 7. Plaintiffs timely complied with the California Government Claims Act
24 before they filed this Complaint.

25 **NATURE OF THE CASE**

26 8. This case arises out of the false arrest, unconstitutional detention, and
27 malicious prosecution of plaintiff Sonny Martinez and the unconstitutional abuse of
28 his family. It is a frightful story of an innocent husband, father, son, and family

1 patriarch who was jailed, prosecuted, and nearly sent to prison for life for a crime he
2 did not commit, and the unconstitutional tactics the defendants used to carry out
3 their plans for the plaintiffs.

4 The defendants are scofflaws. The nature and scope of their malice, oppression,
5 and fraud is *shocking*. Among other things, they conspired to deprive the plaintiffs of
6 their civil rights; fabricated, withheld, suppressed, and tampered with evidence,
7 including exculpatory and impeachment evidence; falsified official reports and
8 records; engaged in judicial deception to obtain warrants illegally; conducted searches
9 and seizures without warrants or probable cause; made arrests without warrants or
10 probable cause; pointed loaded guns at men, women, and very young children who
11 were unarmed and posed no threat of any kind to the gunmen; destroyed,
12 disassembled, and converted illegally seized property to punish the plaintiffs without
13 due process; sicced the victim's family on the plaintiffs to punish the plaintiffs without
14 due process and put plaintiffs in fear of retaliation; and intentionally put plaintiff
15 Sonny Martinez in jail and kept him there when they knew was innocent.

16 The conspiracy to deprive the plaintiffs of their civil rights hatched during the
17 investigation of a shooting the defendants could not solve. On Saturday, October 24,
18 2015, at around 8:50 p.m., 13-year old Alize Valadez was shot in the head at her
19 grandmother's house at 901 Solano Street in West Sacramento. The only eyewitness
20 (EW1) to the shooting told the defendants before they arrested Mr. Martinez or
21 applied for any warrants that: EWE was outside smoking a cigarette when the
22 shooting occurred; EW1 observed a black or dark-colored car driving south on Solano
23 Street and someone fire five gunshots from inside the car; after the shooting, EW1
24 watched the black or dark-colored car continue south on Solano Street to the
25 intersection of Solano Street and Sacramento Avenue; EW1 watched as the dark-
26 colored car turned west on Sacramento Avenue and drove off toward the interstate.
27 EW1 was certain the vehicle involved in the crime was a dark-colored car, and told
28 defendant Palmer he was sure the vehicle was a car.

1 But evidence was of no interest to the defendants. The lead detective admitted
2 to Mr. Martinez that, "I care about that little girl right there (pointing to picture of
3 the victim), that little girl right there *is all I care about.*" The plaintiffs' rights were
4 of no concerns to the defendants, and neither were the constitution and laws of the
5 land. The defendants conducted their "policing" based on conjecture, assumptions,
6 biases, feelings, beliefs, rumors, and huge egos and ended up victimizing the plaintiffs.
7 They arrested, jailed, and charged Mr. Martinez, who they referred to as a non-
8 human "piece of shit," with the shooting and other crimes and enhancements without
9 probable cause and in deliberate disregard of the truth. There was not even a tiny
10 crumb of evidence implicating Mr. Martinez in the crime – zip, zero, zilch, nothing –
11 and the proverbial mountain of exculpatory evidence exonerating Mr. Martinez from
12 involvement in the crime. There was no gunshot residue on his clothes; no gunshot
13 residue in his truck; no dark colored car; no gun; no ammunition; no DNA; no
14 fingerprints; no eyewitness identification; no text messages; no telephone calls; no
15 confessions; no secret recordings; no GPS waypoints; no nothing – zip, zero, zilch,
16 nothing. And there was, among many other exculpatory items of evidence, the cell
17 phone records to prove Mr. Martinez was in Stockton when the crime occurred and
18 cell phone records that proved he never called informant Altamirano like the falsified
19 police reports and probable cause affidavits presented to the magistrate claim. The
20 defendants jailed Mr. Martinez and tried to send him to prison for life without any
21 regard for his rights or the rights of his family.

22 The nightmare the plaintiffs endured will never go away. It will always be
23 with them, etched into their minds. The plaintiffs will always remember the
24 defendants assaults and humiliation; they will always remember the defendants
25 breaking down the door of their home and the raw fear of having masked gunman
26 rush into the house yelling at the top of their lungs while pointing automatic rifles at
27 the family; they will always remember October 27, 2015, and each and every second,
28 minute, hour, day, week, and month between October 27, 2015 and December 18,

1 2015, when Mr. Martinez sat in solitary confinement in the Yolo County jail as an
2 innocent man facing life in prison and wondering if he will ever get to hug his wife
3 and kids again and be there for them as a father, husband, and son. And Ms. Martinez
4 and the Martinez children endured similar fates. Nor will the plaintiffs ever forget
5 the fright, tension, and anxiety they endured for months after Mr. Martinez was
6 released from jail while defendants were threatening to re-arrest him even though
7 they knew he was innocent. The defendants should never again be in the position of
8 power and authority to maliciously oppress people in the community like they
9 maliciously oppressed the plaintiffs in this case; the defendants' felony antics are the
10 very reason the People have lost confidence in the police and the criminal justice
11 system, and their criminal misconduct in this case should raise red flags in all of their
12 other cases. It is reasonable to worry that there are other innocent men and women
13 in prison or with felony records because of similar misconduct by these defendants.

14 The plaintiffs seek compensatory damages for the deprivation of their rights,
15 and for their fear, anxiety, sorrow, suffering, bereavement, mental anguish,
16 emotional distress, misery, economic losses, medical expenses, travel expenses,
17 harassment, oppression, and other harm and damages they suffered; the plaintiffs
18 seek punitive damages against each individual defendant to not only punish him for
19 his malice, oppression, fraud, and other despicable misconduct, but to send a loud and
20 clear message to other police officers, prosecutors, and government supervisors that
21 corruption brings financial hardship; they seek treble damages under the state civil
22 rights laws; and the plaintiffs seek prejudgment interest, costs, attorney fees, and all
23 other relief the court deems just in this case.

24 PARTIES

25 The Martinez Family

26 9. Plaintiffs Sonny Martinez ("Sonny") and Jessica Martinez ("Jessica") are
27 married and have four minor children. Their daughter, VJM, and son, GRM, are 14-
28 years of age and paternal twins. Their son, ARM, is 3-years of age, and their son,

1 EVM, is 2-years of age. They are all citizens of the United States and the state of
2 California and reside in this judicial district. Plaintiff Joann Ramirez ("Joann") is
3 Sonny's biological mother, Jessica's mother-in-law, and the grandmother of VJM,
4 GRM, ARM, and EVM. She is a citizen of the United States and the state of California
5 and resides in this judicial district. The plaintiffs are referred to by their first name
6 for brevity and clarity.

7 **City of West Sacramento Defendants**

8 10. The City of West Sacramento is a public entity in Yolo County in this
9 judicial district.

10 11. The West Sacramento Police Department is a public entity in the City
11 of West Sacramento in this judicial district.

12 12. Defendants Duggins, Cameron, Luiz, Palmer, Stallions, Fellows,
13 Winger, and Crouch are (or were at the times relevant to this case) agents and
14 employees of the City of West Sacramento and the West Sacramento Police
15 Department; they are all being sued in their individual capacities only.

16 13. Doe 1 through Doe 25 are (or were at the times relevant to this case)
17 agents or employees of the City of West Sacramento or the West Sacramento Police
18 Department or both. They reside in this judicial dsitric and are one or more of the
19 following: (a) an individual who was responsible for supervising one or more
20 defendants; (b) an individual who was responsible for training one or more
21 defendants; (c) an individual who made (or makes) policy for a public entity defendant,
22 or whose edicts may failry be said to represent official policy of one or more public
23 entity; or (d) an individual who is responsible in some manner for the deprivation of
24 the plaintiffs' civil rights as an individual or co-conspirator with the other defendants.

25 **City of Stockton Defendants**

26 14. The City of Stockton is a public entity located in San Joaquin county in
27 this judicial district.

28

1 15. The Stockton Police Department is a public entity in the City of Stockton
2 in this judicial district.

3 16. Defendant Zwicky is (or was at the times relevant to this case) an agent
4 and employee the City of Stockton or the Stockton Police Department or both. He
5 resides in this judicial district and is being sued in his individual capacity only.

6 17. Doe 26 through 50 are (or were at the times relevant to this case) agents
7 and employees of the City of Stockton or Stockton Police Department or both. They
8 reside in this judicial dsitriect and are one or more of the following: (a) the individuals
9 who were responsible for supervising one or more of the Stockton defendants; (b) the
10 individuals responsible for training one or more of the Stockton defendants; (c) an
11 individual who made (or makes) policy for a public entity defendant, or whose edicts
12 may failry be said to represent official policy of one or more public entity; or (d) an
13 individual who is responsible in some manner for the deprivation of the plaintiffs'
14 civil rights as an individual or co-conspirator with the other defendants, including
15 the members of the SWAT team and other Stockton Police Deaprtment employees
16 who authorized, supervised, mand particaptied in the operation at the house on
17 Stonewall Court on Minday, October 26, 2015.

18 **Paid Police Informant Rafael Altamirano**

19 18. Defendant Rafael Altamirano is a paid or compensated police inforamnt
20 who resides in this judicial dsitriect. He consipred with the other individual defendants
21 to deprive the plainitffs of their civil rights under color of state law.

22 **Additional Doe Defendants and Doe Allegations**

23 19. Doe 51 through Doe 100 are (or was at the times relevant to this case)
24 private individuals or agents and employees of one or more of the public entity
25 defendants. They reside in this judicial district and are responsible in some manner
26 for the deprivation of the plaintiffs' civil rights as an individual or co-conspirator with
27 the other defednats.

28

1 20. Plaintiffs do not know the true names, ranks, titles, job duties, or
2 capacities of the defendants sued by a fictitious name because Plaintiffs do not have
3 access to the information without discovery. But they believe that each defendant
4 sued by a fictitious name is responsible in some manner for the deprivation of their
5 civil rights under color of state law and will amend this Complaint after they obtain
6 the information to make the amendments.

7 **Conspiracy**

8 21. All of the individual defendants conspired to deprived the plaintiffs of
9 their civil rights while acting under color of state law in the scope of their agency or
10 employment. Each individual defendant knew and understood the essential scope of
11 the agreeemnt and plan was to work together like partners to deprive the plaintiffs
12 of their civil rights by doing the affirmative acts, or participating in the affirmative
13 acts of the others, or omitting to perform a legally required act, or comitting a lawful
14 act by unlawful means; and each defendant, acting under color of state law in the
15 course and scope of their agency or employment in furtherance of the conspiracy, met,
16 talked, collaborated, planned, advised, approved, assisted, ratified, supressed,
17 concealed, mislead, fabricated, tamprered with, and traveled upon roads, bridges, and
18 highways to do the affirmative acts, or participate in the affirmative acts of the others,
19 or omitt to perform legally required acts that resulted in the deprivation, under color
20 of state law, of plaintiffs rights under the Constitution, laws, and treaties of the
21 United States. The conspiracy was formed and carried out in whole or in part using
22 instrumentalities or facilites of interstate commerce that included the telephone
23 wires, internet, email, mail, wire, cellualr transmissions, streets, highways, bridges,
24 and other facilites and channels of interstate commerce or that facilitate interstate
25 commerce.

26

27

28

FIRST CLAIM FOR RELIEF**(Fourth Amendment)**

22. Plaintiffs incorporate the allegations in paragraphs 1 through 21 into this claim for relief.

23. On information and belief, the individual defendants conformed their conduct in whole or part to the official customs, policies, or practices of their public entity employers, and in whole or in part to their training.

August 20, 2015

24. On August 20, 2015, Sonny, Jessica, ARM, and EVM moved into unit #8 of a 10-unit housing complex at 2606 South Harrison Street in Stockton (the "housing complex") with Sonny's cousin.

25. Defendant Altamirano lived in unit #10 of the housing complex during the entire time the plaintiffs lived in unit #8 of the housing complex, and on information and belief has never moved from unit #10 of the housing complex.

26. Altamirano was friends with Sonny's cousin, Stephanie, and her boyfriend, Chewey.

27. A woman by the first name of Bonnie owns the housing complex. Sonny and Bonnie hit it off right away, and Bonnie asked Sonny to do the maintenance work at the housing complex. She also asked Sonny to complete several larger repairs and maintenance jobs in units #1, #2, #7, #8, #10, and #11. Bonnie gave Sonny's cell phone number to the tenants of the housing complex, and told the tenants of the housing complex to call Sonny when they needed maintenance. She also gave Sonny a key to the large storage shed on the property where she stored maintenance supplies, spare parts, and hand tools.

September 15, 2015 to October 23, 2015

28. Sonny did not meet Altamirano until around mid-September 2015, some three to four weeks after the plaintiffs moved into the housing complex.

1 29. Altamirano walked over to where Sonny was working on his truck and
2 introduced himself to Sonny. He told Sonny he repaired and detailed cars for a living.
3 Sonny told Altamirano that Bonnie asked him to do the maintenance work around
4 the housing complex, and that she asked him to do several jobs in Altamirano's unit.
5 The news upset Altamirano. He brusquely said he had been trying to get that
6 maintenance job for a long time and turned around and walked back to his unit
7 without saying another word to Sonny.

8 30. Sonny was warned not to leave tools and other things of value in his
9 truck or lying around because there were a lot of thefts at the housing complex and
10 Altamirano was the suspected thief. Another person told Sonny that he knew
11 Altamirano was a "snitch" who solicited a large drug buy so he could tell the police
12 about the transaction to collect money or get out of some trouble he was in or both.
13 Altamirano also owed money to some Sureños street gang members who showed up
14 at the housing complex with guns about 6 or 8 or more times looking for Altamirano
15 while the plaintiffs lived in the housing complex. Most or all of the tenants in the
16 housing complex were witness to these armed encounters at one time or another and
17 very likely heard the gunshots fired outside of Altamirano's unit when he did not
18 answer the door.

19 31. Sonny and Jessica overheard one of the armed confrontations between
20 the Sureños and Altamirano's wife through their open bedroom window, and seen two
21 officers from the Stockton Police Department taking a report from Altamirano and
22 his wife about the armed confrontation that night. When Altamirano came over to
23 talk to Sonny the next day, Sonny asked him about the incident. Altamirano was
24 obviously very scared and asked Sonny to "please post-up bro bro." The term post-up
25 means to take up arms and guard Altamirano from harm from the Sureños when they
26 returned, but Sonny told Altamirano "hell no" and that he was "loco" if he was
27 thinking about going to war with the Sureños. Sonny wrote the request off to the
28 crazy talk of a methamphetamine addict. Undeterred, Altamirano asked Sonny

1 where he could buy a gun, and Sonny told him at the gun store, which upset
2 Altamirano. Altamirano then turned and walked away without say anything else to
3 Sonny, as he as obviously mad. But the next day, Altamirano drove up in his van and
4 motioned for Sonny to come over and talk. When Sonny reached the passenger side
5 window of the van, he seen a sawed off shotgun in the passenger seat and glass pipe
6 and small baggie containing whitish crystals in plain view on the console of the van.
7 In his typically cocky manner, Altamirano motioned at the sawed-off shotgun and
8 said, "That's [nodding at the shotgun] is for the scraps [Sureños]," Altamirano then
9 reached down to his right side and pulled out two strange looking objects from behind
10 the console and smirked and said "these too," meaning the objects were for the
11 Sureños. Altamirano asked Sonny if he knew anyone who wanted to buy some
12 "grenades" as he held up the objects. Sonny said, "Hell No, I'm cool" as he began
13 quickly backing away from the van. Altamirano said something that Sonny could not
14 understand and sped off, leaving Sonny in the dust. Sonny went back to his unit in
15 shock that Altamirano by what Altamirano was contemplating.

16 32. Altamirano is a convicted felon.

17 33. Altamirano has a lengthy criminal record.

18 34. Altamirano has been convicted of drug offenses.

19 35. Altamirano has been convicted of one or more counts of embezzlement.

20 36. Altamirano has been convicted of one or more counts of first degree
21 burglary.

22 37. Altamirano has been charged with second degree burglary and drug
23 offenses, and the second degree burglary charge was disposed of on the drug charges.

24 38. Altamirano has been convicted of one or more counts of petty theft.

25 39. Embezzlement, burglary, and petty theft are crimes involving moral
26 turpitude.

27 40. Altamirano buys, sells, trades, makes and possesses illegal firearms,
28 like the sawed off shotgun he showed off to Sonny.

1 41. Altamirano buys, sells, trades, makes and possesses improvised
2 explosive devices like the ones he showed off to Sonny.

3 42. On information and belief, Altamirano has solicited and arranged to buy
4 drugs from a person and then sold the information about the transaction to the police
5 for money or other consideration.

6 43. On information and belief, on or around October 3, 2015, Altamirano
7 was arrested for petty theft, weapons charges, drug charges, or charges related to the
8 improvised explosive devices he showed off to Sonny, and sought leniency in that
9 case(s) in exchange for information.

10 44. Altamirano defrauded Bonnie, an elderly woman who is over 65-years
11 old, by soliciting money from her to buy security cameras for the housing complex.
12 Altamirano told Bonnie he could get her a great deal on some security cameras
13 someone he knew was selling for \$475.00. Bonnie gave Altamirano \$475.00 to
14 purchase the security cameras, but Altamirano kept her money and never delivered
15 the security cameras.

16 45. Altamirano was addicted to methamphetamine in October 2015.

17 46. Altamirano used methamphetamine regularly while the plaintiffs were
18 living in unit #8 of the housing complex.

19 47. Altamirano could be frequently observed sitting in his car in the parking
20 lot of the housing complex where he lives smoking methamphetamine.

21 48. Altamirano owed money to the Sureños for drugs in October 2105, but
22 could not pay the debt.

23 49. Altamirano was under financial pressure in October 2015.

24 50. Altamirano disliked Sonny because Sonny would not befriend
25 Altamirano.

26 51. Altamirano was angry at Sonny because Sonny would not take up arms
27 to defend Altamirano from the Sureños.

28

1 52. On information and belief, the defendants rewarded and encouraged
2 Altamirano to fabricate evidence and make statements under oath or threat of
3 criminal prosecution that they knew or should have known were fabricated.

4 53. Altamirano also began annoying Sonny with text messages and
5 telephone calls, and would regularly interrupt Sonny while he was working. Sonny
6 thought Altamirano was a loner with no friends who was looking for someone to
7 befriend. Altamirano would regularly text or call Sonny five or more times a day; he
8 would want to discuss the work Sonny was going to do in his unit, or car detailing
9 tips Sonny gave him, or ask Sonny to put his cousin on the phone because she had no
10 telephone of her own. There were even a few days when Altamirano called or texted
11 Sonny a dozen or more times.

12 54. Sonny was always nice to Altamirano, but finally got so tired of
13 Altamirano texting and calling him that he asked Altamirano to stop calling and stop
14 texting; Sonny did not want anything to do with Altamirano outside of the repairs
15 and maintenance to Altamirano's unit. In addition to the illegal gun and grenades,
16 Sonny knew Altamirano was a heavy drug user; he had seen drugs and drug
17 paraphernalia in Altamirano's cars several times and knew from Altamirano's
18 behavior that Altamirano was often high on methamphetamine and acted irrationally.
19 So again, Sonny made it very clear to Altamirano, in a nice way and more than once,
20 that he was too busy with his work and family obligations to hang out with
21 Altamirano and respond to all of his calls and texts.

22 **Week of October 19, 2015**

23 55. The plaintiffs moved out of the housing complex during the latter part
24 of the week of October 19, 2015 (they think it was on Thursday or Friday, but are not
25 sure), and a couple of days later moved into a home with another of Sonny's cousins,
26 Raymond Orosco, Jr., on Stonewall Court in Stockton. Ray and his longtime girlfriend
27 were splitting and Ray needed help moving his things to his new residence and to
28 clean up the house to turn back to his girlfriend and her parents, who owned the

1 house. Ray does not have a driver's license and does not drive or own a car. He relies
2 on public transportation and friends and coworkers to get around. Sonny and Jessica
3 planned to live at the house on Stonewall Court until they finished the work for Ray
4 and then move back to Sacramento.

5 56. Sonny's truck was used to move Ray's belongings to a duplex on Kelly
6 Drive in Stockton where Ray lived after the breakup.

7 **Friday, October 23, 2015**

8 57. Sonny and Jessica helped Ray cleanup, pack, and move his things to the
9 house on Kelly Drive on Friday, October 23, 2015.

10 58. On Friday, October 23, 2015 at 11:23 a.m., Altamirano used his cell
11 phone – (209)-898-1336 – to send a text message to Sonny's cell phone – (916) 320-
12 7392 – that reads, "*bro can u come outside pls,*" but Sonny ignored the text message;
13 Altamirano did not know that the plaintiffs had already moved out of the housing
14 complex.

15 59. Altamirano did not see Sonny on Friday, October 23, 2015.

16 60. Altamirano did not call Sonny on Friday, October 23, 2015.

17 61. Altamirano did not speak to Sonny on Friday, October 23, 2015

18 62. Sonny did not see Altamirano on Friday, October 23, 2015.

19 63. Sonny did not call Altamirano on Friday, October 23, 2015.

20 64. Sonny did not text Altamirano on Friday, October 23, 2015.

21 65. Sonny did not speak to Altamirano on Friday, October 23, 2015.

22 66. Sonny did not leave Stockton on Friday, October 23, 2015.

23 67. Sonny's cell phone did not leave Stockton on Friday, October 23, 2015.

24 68. Sonny's truck did not leave Stockton on Friday, October 23, 2015.

25 **Saturday, October 24, 2015**

26 69. Sonny and Jessica helped Ray cleanup, pack, and move his things to the
27 house on Kelley Drive on Saturday, October 24, 2015.

28

1 70. At approximately 4:00 p.m. on Saturday, October 24, 2015, Sonny drove
2 Ray to 8648 Kelly Drive in Stockton so that Ray could attend a barbecue with his new
3 roommate and friends. Sonny drove back to the house on Stonewall Court after he
4 dropped Ray off.

5 71. At 8:26 p.m. on Saturday, October 24, 2015, Sonny called his mother in
6 Sacramento. He used his cell phone – (916) -320-7392 – to call his mother, Plaintiff
7 Joann Ramirez, on her cell phone – (916) 584-2566. Sprint usage records for Sonny's
8 cell phone confirm that Sonny's cell phone was in Stockton for the 19-minute duration
9 of the call. Joann's cell phone usage records corroborate the Sprint records, and
10 confirm that Joann's cell phone was in Sacramento for the 19-minute duration of the
11 call. The call between Sonny and Joann ended at 8:46 p.m., just about four or five
12 minutes before Alize Valadez was shot.

13 72. At approximately 8:50 p.m. on Saturday, October 24, 2015, 13-year old
14 Alize Valadez was shot in the head. She was at her grandmother's house at 901
15 Solano Street in West Sacramento when the shooting occurred.

16 73. It is factually impossible to drive from the house on Stonewall Court in
17 Stockton to the scene of the shooting on Solano Street in West Sacramento in five
18 minutes.

19 74. At 8:51 p.m. on Saturday, October 24, 2015, officers from defendant
20 West Sacramento Police Department were dispatched to a 911 call from 901 Solano
21 Street in West Sacramento.

22 75. EW1, the only eyewitness to the shooting, was outside smoking a
23 cigarette when the shooting occurred; EW1 watched a black or dark-colored car
24 driving south on Solano Street as five gunshots were from inside the car; EW1 then
25 watched the dark-colored car continue south on Solano Street before stopping at the
26 intersection of Solano Street and Sacramento Avenue; EW1 then watched the dark-
27 colored car turn west on Sacramento Avenue and drive off toward the freeway; EW1
28 was certain the vehicle involved in the crime was a dark colored passenger car.

1 76. The intersection of Solano Street and Sacramento Avenue in West
2 Sacramento is well lit by a street light across from the intersection on the south side
3 of Sacramento Avenue, and the abundant moonlight from the nearly full moon on the
4 night of the shooting, which was clear.

5 77. EW1's observations are corroborated by the evidence at the scene,
6 including the trajectory analysis.

7 78. At approximately 9:05 p.m. on Saturday, October 24, 2015, Sonny left
8 the house on Stonewall Court to pick Ray up from the barbecue at the house on Kelley
9 Drive.

10 79. Sonny and Ray left the house on Kelly Drive drive about 9:15 p.m., and
11 drove to the Walgreens at 3131 West Hammer Lane in Stockton.

12 80. Ray and Sonny arrived at Walgreens at 3131 West Hammer Lane about
13 9:20 p.m., parked the truck, and walked into Walgreens to shop.

14 81. Ray paid for their merchandise at 9:35 p.m., and Sonny and Ray drove
15 back the house on Stonewall Court.

16 82. Walgreens had security cameras in the store, and the security video
17 footage from that store is kept for 60 days.

18 83. The defendants did not ask for the security camera footage from
19 Walgreens.

20 84. There are numerus security cameras along the route Sonny traveled
21 from the house on Stonewall Court to the house on Kelly Drive.

22 85. The defendants did not ask for any of the security camera footage
23 available from the security cameras along the route Sonny traveled between the
24 house on Stonewall Court and house on Kelly Drive.

25 86. Ray left the Walgreens receipt in the cab of Sonny's truck.

26 87. On October 27, 2015, the defendants found the Walgreens receipt in the
27 cab of Sonny's truck.

28

1 88. Police conducted a trajectory analysis of the rounds fired into the house
2 during the shooting.

3 89. Police concluded that five rounds of .357 Magnum ammunition were
4 fired into the house.

5 90. Police could not determine from the evidence if the firearm used in the
6 shooting was a handgun or rifle.

7 91. A round of .357 Magnum ammunition fired from a rifle produces little
8 or no visible flash at night at 100 yards.

9 92. A round of .357 Magnum ammunition fired from a rifle equipped with a
10 flash suppressor produces little or no visible flash at night at 100 yards.

11 93. Police could not determine from the evidence if the firearm used in the
12 shooting was equipped with a flash suppressor.

13 94. Police could not determine from the evidence if the rounds were fired
14 from a front seat or back seat of the car.

15 95. At 11:52 p.m. on Saturday, October 24, 2015, just shortly after the
16 regional nightly news broadcasts ended, Altamirano used his cell phone – (209)-898-
17 1336 – to send a text message to Sonny’s cell phone – (916) 320-7392 – that reads, “I
18 *need u bro bro the scrAps [Sureños] came by dumping [shooting] right now pls. Call*
19 *ME,*” but Sonny ignored the text message. The word “scraps” is what Altamirano
20 called the Sureños when he talked to Sonny, and the word “dumping” is what
21 Altamirano used for the word shooting when he talked to Sonny.

22 96. Altamirano did not see Sonny on Saturday, October 24, 2015.

23 97. Altamirano did not call Sonny on Saturday, October 24, 2015.

24 98. Altamirano did not speak to Sonny on Saturday, October 24, 2015

25 99. Sonny did not see Altamirano on Saturday, October 24, 2015.

26 100. Sonny did not call Altamirano on Saturday, October 24, 2015.

27 101. Sonny did not text Altamirano on Saturday, October 24, 2015.

28 102. Sonny did not speak to Altamirano on Saturday, October 24, 2015.

1 103. Sonny did not leave Stockton on Saturday, October 24, 2015.

2 104. Sonny's cell phone did not leave Stockton on Saturday, October 24, 2015.

3 105. Sonny's truck did not leave Stockton on Saturday, October 24, 2015

4 106. Sonny's cell phone was in Stockton when Alize Valadez was shot.

5 107. Sonny's truck was in Stockton when Alize Valadez was shot.

6 108. Sonny was in Stockton when Alize Valadez was shot.

7 109. Sonny did not shoot Alize Valadez.

8 **Sunday, October 25, 2015**

9 110. Local and regional media outlets continued to broadcast details of the
10 Alize Valadez shooting during each news segment broadcast on Sunday, October 25,
11 2015.

12 111. On Sunday, October 25, 2015, at 11:49 p.m., Altamirano used his cell
13 phone – (209)-898-1336 – to call Sonny's cell phone – (916) 320-7392 – but Sonny
14 ignored the call.

15 112. Altamirano did not see Sonny on Sunday, October 25, 2015.

16 113. Altamirano did not speak to Sonny on Sunday, October 25, 2015.

17 114. Altamirano did not text Sonny on Sunday, October 25, 2015.

18 115. Sonny did not see Altamirano on Sunday, October 25, 2015.

19 116. Sonny did not speak to Altamirano on Sunday, October 25, 2015.

20 117. Sonny did not call Altamirano on Sunday, October 25, 2015.

21 118. Sonny did not text Altamirano on Sunday, October 25, 2015.

22 **Monday, October 26, 2015**

23 119. Local and regional media outlets continued to broadcast details of the
24 Alize Valadez shooting during each news segment broadcast on Monday, October 26,
25 2015.

26 120. On Monday, October 26, 2015, defendants Zwicky met and talked with
27 Altamirano.

28

1 121. On Monday, October 26, 2015, defendant Zwicky called and talked to
2 one or more of the individual defendants employed by the City of West Sacramento.

3 122. The defendants claim at 09:07 a.m. on Monday, October 26, 2015, an
4 anonymous male caller telephoned a tip into dispatch for the West Sacramento Police
5 Department regarding the Alize Valadez shooting; they claim the caller said "on the
6 night of the shooting he saw a 2006 Chevy Silverado white on top black on bottom,
7 black rims, heavy set male driver with no one else seen in the vehicle." And claim
8 "the anonymous male stated he saw 6-7 flash bangs and then took off heading north
9 from the residence." The defendants did not disclose to Sonny or his public defender
10 any recordings or printouts related to the anonymous call from the dispatch system
11 for the West Sacramento police Department.

12 123. At 9:15 a.m. on Monday, October 26, 2015, Altamirano used his cell
13 phone – (209)-898-1336 – to send another text message to Sonny's cell phone – (916)
14 320-7392 – that reads, "*bro bro can u call me pls,*" but Sonny ignored the text message.

15 124. On Monday, October 26, 2015, Altamirano drove over to the house on
16 Stonewall Court to locate Sonny. Sonny was very surprised to see Altamirano and
17 thought it should have been obvious to Altamirano than Sonny did not want anything
18 to do with Altamirano. But Sonny politely walked outside to the front passenger
19 window of Altamirano's van to say hello to Altamirano. Altamirano was fidgeting
20 with his phone and trembling and shaking like he was high on methamphetamine
21 and he immediately asked Sonny, "*Hey, did you hear about that little girl in*
22 *Sacramento that got hurt in that drive-by?*" But Sonny had not heard about the
23 shooting and told Altamirano so. Altamirano then said he had to leave and abruptly
24 drove off, which Sonny chalked up to the bizarre behavior of a methamphetamine
25 addict. And Sonny thought it would be the last time he would ever hear from
26 Altamirano.

27 125. On Monday, October 26, 2015, at approximately 1:07 p.m., defendant
28 Palmer interviewed EW1 on the telephone; the interview was recorded.

1 126. At 4:28 p.m. on Monday, October 26, 2015, at the request of one or more
2 defendants and while one or more defendants was present and listening, Altamirano
3 used his cell phone – (209)-898-1336 – to place a call to Sonny’s cell phone – (916)
4 320-7392 – which Sonny ignored.

5 127. At 4:41 p.m. on Monday, October 26, 2015, at the request of one or more
6 defendants and while one or more defendants was present and observing, Altamirano
7 used his cell phone – (209)-898-1336 – to send another text message to Sonny’s cell
8 phone – (916) 320-7392 – that reads, “*can u come out bro pls,*” which Sonny ignored.

9 128. At 9:32 p.m., on Monday, October 26, 2015, at the request of one or more
10 defendants and while one or more defendants was present and listening, Altamirano
11 used his cell phone – (209)-898-1336 – to place another call to Sonny’s cell phone –
12 (916) 320-7392 – which Sonny ignored.

13 129. Altamirano has not tried to contact Sonny since 9:32 p.m., on Monday,
14 October 26, 2015.

15 130. Sonny did not call Altamirano on Monday, October 26, 2015.

16 131. Sonny did not text Altamirano on Monday, October 26, 2015.

17 132. Sonny did not talk to Altamirano on the telephone on Monday, October
18 26, 2015.

19 133. At approximately 11:50 p.m. on Monday, October 26, 2015, defendant
20 Stallions applied for and obtained a warrant for Sonny’s arrest in furtherance of the
21 conspiracy.

22 134. At approximately 1:20 a.m. on Tuesday, October 27, 2015, defendant
23 Winger applied for and obtained a search warrant whose terms are set forth in the
24 warrant in furtherance of the conspiracy.

25 135. The defendants applied for and obtained a search warrant for the cell
26 phone usage records for each cell phone they seized at the house on Stonewall Court
27 in Stockton, including Sonny’s cell phone. The applications were in furtherance of
28 the conspiracy.

1 136. The defendants applied for and obtained a search warrant to install a
2 GPS tracking device in the plaintiffs' white, 2003 Chevrolet Silverado truck in
3 furtherance of the conspiracy.

4 137. The defendants installed the GPS tracking device in the plaintiffs' white,
5 2003 Chevrolet Silverado truck without a warrant in furtherance of the conspiracy,
6 and falsified evidence to cover up their misconduct.

7 138. On information and belief, the probable cause affidavits presented to the
8 magistrate to obtain the warrants also contain, in substance, the following
9 representation:

10 *On Monday, October 26, 2015 Sonny Martinez called*
11 *Informant Rafael Altamirano and confessed to shooting*
12 *Alize Valadez.*

13 138.1. The representation is false.

14 138.2. The representation was material to the determination of
15 probable cause for the warrant to arrest Sonny and warrant to search the house on
16 Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado truck.

17 138.3. The defendants were trained to collect digital evidence
18 from a cell phone, cell phone call log, and cell phone usage records before they met
19 with Altamirano for the first time. Every magistrate would want to have this
20 information when considering the defendants' applications for a warrant to arrest
21 Sonny and warrant to search the house on Stonewall Court and the plaintiffs' 2003
22 Chevrolet Silverado truck.

23 138.4. The defendants defined digital evidence from a cell phone
24 in one or more of the search warrants as: "phone identification numbers, cellular call
25 logs, text messages, photos, videos, audio files, attachments, emails, GPS locations,
26 social networking data to include instant messages, emails, documents, internet
27 history, photographs, videos, and data files stored on the cellular phone tending to
28

1 establish a suspect who committed the crime, identify additional witnesses, and
2 attempt to obtain additional evidence related to this case.”

3 138.5. The defendants met with Altaminrao before they applied
4 for any of the warrants or arrested Sonny. Every magistrate would want to have this
5 information when considering the defendants’ applications for a warrant to arrest
6 Sonny and warrant to search the house on Stonewall Court and the plaintiffs’ 2003
7 Chevrolet Silverado truck.

8 138.6. Altamirano’s cell phone log was available to the defendants
9 before they applied for any of the warrants or arrested Sonny. Every magistrate
10 would want to have this information when considering the defendants’ application
11 for a warrant to arrest Sonny. Every magistrate would want to have this information
12 when considering the defendants’ applications for a warrant to arrest Sonny and
13 warrant to search the house on Stonewall Court and the plaintiffs’ 2003 Chevrolet
14 Silverado truck.

15 138.7. Altamirano’s cell phone usage records were available to the
16 defendants before they applied for any of the warrants or arrested Sonny. Every
17 magistrate would want to have this information when considering the defendants’
18 applications for a warrant to arrest Sonny and warrant to search the house on
19 Stonewall Court and the plaintiffs’ 2003 Chevrolet Silverado truck.

20 138.8. The defendants reviewed Altamirano’s cell phone call log
21 and cell phone usage records before they applied for any warrants or arrested Sonny.
22 Every magistrate would want to have this information when considering the
23 defendants’ application for a warrant to arrest Sonny. Every magistrate would want
24 to have this information when considering the defendants’ applications for a warrant
25 to arrest Sonny and warrant to search the house on Stonewall Court and the plaintiffs’
26 2003 Chevrolet Silverado truck.

27 138.9. Neither Altamirano’s cell phone call log nor Altamirano’s
28 cell phone usage records reflect any calls from Sonny’s cell phone to Altamirano’s cell

1 phone on Monday morning, October 25, 2015 or at any other time after the Alize
2 Valadez shooting at 8:50 p.m. on Saturday, October 26, 2015. Every magistrate would
3 want to have this information when considering the defendants' applications for a
4 warrant to arrest Sonny and warrant to search the house on Stonewall Court and the
5 plaintiffs' 2003 Chevrolet Silverado truck.

6 138.10. The defendants conducted a Cellibrite analysis of
7 Altamirano's cell phone before they applied for any warrants or arrested Sonny.
8 Every magistrate would want to have this information when considering the
9 defendants' application for a warrant to arrest Sonny. Every magistrate would want
10 to have this information when considering the defendants' applications for a warrant
11 to arrest Sonny and warrant to search the house on Stonewall Court and the plaintiffs'
12 2003 Chevrolet Silverado truck.

13 138.11. The Cellibrite analysis the defendants conducted on
14 Altamirano's cell phone before they applied for any warrants or arrested Sonny does
15 not reflect any calls from Sonny's cell phone to Altamirano's cell phone on Monday
16 morning, October 25, 2015 or at any other time after the Alize Valadez shooting at
17 8:50 p.m. on Saturday, October 26, 2015. Every magistrate would want to have this
18 information when considering the defendants' applications for a warrant to arrest
19 Sonny and warrant to search the house on Stonewall Court and the plaintiffs' 2003
20 Chevrolet Silverado truck.

21 138.12. The SIM card extraction and analysis the defendants
22 conducted on the SIM card from Altamirano's cell before they applied for any
23 warrants or arrested Sonny does not reflect any calls from Sonny's cell phone to
24 Altamirano's cell phone on Monday morning, October 25, 2015 or at any other time
25 after the Alize Valadez shooting at 8:50 p.m. on Saturday, October 26, 2015. Every
26 magistrate would want to have this information when considering the defendants'
27 application for a warrant to arrest Sonny. Every magistrate would want to have this
28 information when considering the defendants' applications for a warrant to arrest

1 Sonny and warrant to search the house on Stonewall Court and the plaintiffs' 2003
2 Chevrolet Silverado truck.

3 138.13. Other digital evidence from Altamirano's cell phone was
4 available to the defendants before they applied for any of the warrants or arrested
5 Sonny. Every magistrate would want to have this information when considering the
6 defendants' application for a warrant to arrest Sonny.

7 138.14. The defendants knew if Sonny called Altamirano on
8 Monday morning, October 25, 2015, to confess to the crime like Altamirano claimed,
9 there would be a record of the call in Altamirano's cell phone call log and cell phone
10 usage records and a record of the call in Sonny's cell phone call log and cell phone
11 usage records. Every magistrate would want to have this information when
12 considering the defendants' application for a warrant to arrest Sonny.

13 138.15. The defendants tried but failed to corroborate Altamirano's
14 claim about receiving a call on his cell phone from Sonny on his cell phone on the
15 morning of Monday, October 26, 2015. Every magistrate would want to have this
16 information when considering the defendants' applications for a warrant to arrest
17 Sonny and warrant to search the house on Stonewall Court and the plaintiffs' 2003
18 Chevrolet Silverado truck.

19 138.16. The defendants knew Sonny did not call Altamirano and
20 confess to the crime before they applied for any of the warrants or arrested Sonny.
21 Every magistrate would want to have this information when considering the
22 defendants' application for a warrant to arrest Sonny. Every magistrate would want
23 to have this information when considering the defendants' applications for a warrant
24 to arrest Sonny and warrant to search the house on Stonewall Court and the plaintiffs'
25 2003 Chevrolet Silverado truck.

26 138.17. The contradictions between what Altamirano told the
27 defendants and what the objective evidence from his cell phone log and cell phone
28 usage records provided to the defendants is material information every magistrate

1 would want to have when considering the defendants' application for a warrant to
2 arrest Sonny. Every magistrate would want to have this information when
3 considering the defendants' applications for a warrant to arrest Sonny and warrant
4 to search the house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado
5 truck.

6 138.18. The defendants knowingly and deliberately, or with
7 reckless disregard for the truth, made the misrepresentation to the magistrate that
8 created a falsehood in their applications for the warrants.

9 139. On information and belief, the probable cause affidavits presented to the
10 magistrate to obtain the warrants contain, in substance, the following representation:

11 *The details of this crime was given to the media for*
12 *broadcast. An anonymous tip came into dispatch (10-26-*
13 *2015 at 0907 hrs) from a male stating on the night of the*
14 *shooting he saw a truck matching the description of Sonny*
15 *Martinez's truck being driven by a heavy set male driver*
16 *matching the description of Sonny Martinez with no one*
17 *else seen in the vehicle. The caller said he saw 6-7*
18 *flashbangs and then took off heading north from the*
19 *residence.*

20 139.1. The representation is false.

21 139.2. The representation was material to the determination of
22 probable cause.

23 139.3. The call was not anonymous. Every magistrate would want
24 to have this information when considering the defendants' application for a warrant
25 to arrest Sonny. Every magistrate would want to have this information when
26 considering the defendants' applications for a warrant to arrest Sonny and warrant
27 to search the house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado
28 truck.

29 139.4. The automatic caller identification and automatic location
30 identification features of the dispatch system in Yolo County identify the telephone
31 number of the telephone being used to make the call regardless of the caller
32 identification settings on the telephone (including cell phone numbers); the name of

1 the owner of the telephone number (including cell phone numbers); and the location
2 or approximate location of the telephone. Every magistrate would want to have this
3 information when considering the defendants' applications for a warrant to arrest
4 Sonny and warrant to search the house on Stonewall Court and the plaintiffs' 2003
5 Chevrolet Silverado truck.

6 139.5. The defendants knew the caller was unreliable because the
7 information was inconsistent with the trajectory evidence at the scene that
8 conclusively proves the vehicle involved in the crime was not an SUV or 2003-2006
9 Chevrolet Silverado truck but a car like EW1 told Palmer. Every magistrate would
10 want to have this information when considering the defendants' applications for a
11 warrant to arrest Sonny and warrant to search the house on Stonewall Court and the
12 plaintiffs' 2003 Chevrolet Silverado truck.

13 139.6. The defendants knew the caller was unreliable because the
14 information was inconsistent with the eyewitness account of EW1, which is consistent
15 with evidence at the scene. Every magistrate would want to have this information
16 when considering the defendants' applications for a warrant to arrest Sonny and
17 warrant to search the house on Stonewall Court and the plaintiffs' 2003 Chevrolet
18 Silverado truck.

19 139.7. The defendants knew the information the caller provided
20 did not contain any indicia of reliability. Every magistrate would want to have this
21 information when considering the defendants' applications for a warrant to arrest
22 Sonny and warrant to search the house on Stonewall Court and the plaintiffs' 2003
23 Chevrolet Silverado truck.

24 139.8. The caller's statement does not contain any information
25 from which one might conclude the caller is honest or his information reliable. Every
26 magistrate would want to have this information when considering the defendants'
27 applications for a warrant to arrest Sonny and warrant to search the house on
28 Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado truck.

1 139.9. The caller's statement does not contain any predictions of
2 future behavior of a suspect. Every magistrate would want to have this information
3 when considering the defendants' applications for a warrant to arrest Sonny and
4 warrant to search the house on Stonewall Court and the plaintiffs' 2003 Chevrolet
5 Silverado truck.

6 139.10. The caller was not subject to arrest for making a false
7 police report. Every magistrate would want to have this information when
8 considering the defendants' applications for a warrant to arrest Sonny and warrant
9 to search the house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado
10 truck.

11 139.11. The fact the caller fled from the scene creates substantial
12 doubt about the reliability of his statement. Every magistrate would want to have
13 this information when considering the defendants' applications for a warrant to
14 arrest Sonny and warrant to search the house on Stonewall Court and the plaintiffs'
15 2003 Chevrolet Silverado truck.

16 139.12. The fact the caller waited nearly 48 hours after the crime
17 was committed to call the police creates substantial doubt about the reliability of his
18 statement. Every magistrate would want to have this information when considering
19 the defendants' applications for a warrant to arrest Sonny and warrant to search the
20 house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado truck.

21 139.13. The defendants were suspicious that the alleged
22 anonymous call came into dispatch on the same morning that defendants claim
23 Altamirano came forward with his claim to Zwicky. Every magistrate would want to
24 have this information when considering the defendants' applications for a warrant to
25 arrest Sonny and warrant to search the house on Stonewall Court and the plaintiffs'
26 2003 Chevrolet Silverado truck.

27 139.14. A truck being driven by "a heavy set male" is not, by itself,
28 a sufficient description to represent to the magistrate that the caller's information

1 matched the description of anyone. Every magistrate would want to have this
2 information when considering the defendants' applications for a warrant to arrest
3 Sonny and warrant to search the house on Stonewall Court and the plaintiffs' 2003
4 Chevrolet Silverado truck.

5 139.15. The defendants knew that reliable height and weight
6 information cannot be provided by a person who observed another person sitting in a
7 vehicle at night. Every magistrate would want to have this information when
8 considering the defendants' applications for a warrant to arrest Sonny and warrant
9 to search the house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado
10 truck.

11 139.16. If the caller provided more information to the defendants
12 than just that the vehicle was being driven by a heavy set male, then that information
13 was not provided to Sonny or his public defender. Every magistrate would want to
14 have this information when considering the defendants' applications for a warrant to
15 arrest Sonny and warrant to search the house on Stonewall Court and the plaintiffs'
16 2003 Chevrolet Silverado truck.

17 139.17. The anonymous caller said the truck involved in the crime
18 was a 2006 model Chevrolet Silverado truck. Every magistrate would want to have
19 this information when considering the defendants' applications for a warrant to
20 arrest Sonny and warrant to search the house on Stonewall Court and the plaintiffs'
21 2003 Chevrolet Silverado truck.

22 139.18. The plaintiffs do not own a 2006 model Chevrolet Silverado
23 truck. Every magistrate would want to have this information when considering the
24 defendants' applications for a warrant to arrest Sonny and warrant to search the
25 house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado truck.

26 139.19. The 2006 model year Chevrolet Silverado truck had a new
27 body style that differentiate it from previous model years of the truck. Every
28 magistrate would want to have this information when considering the defendants'

1 applications for a warrant to arrest Sonny and warrant to search the house on
2 Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado truck.

3 139.20. The caller said the truck involved in the crime was white
4 over black. Every magistrate would want to have this information when considering
5 the defendants' applications for a warrant to arrest Sonny and warrant to search the
6 house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado truck.

7 139.21. The plaintiffs truck was not white over black when the
8 shooting occurred. Every magistrate would want to have this information when
9 considering the defendants' applications for a warrant to arrest Sonny and warrant
10 to search the house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado
11 truck.

12 139.22. The caller said the rims on the truck were black, but
13 Altamirano told the defendants the rims on the plaintiffs' truck were chrome with
14 some remnants of black paint. Every magistrate would want to have this information
15 when considering the defendants' applications for a warrant to arrest Sonny and
16 warrant to search the house on Stonewall Court and the plaintiffs' 2003 Chevrolet
17 Silverado truck.

18 139.23. There were inconsistencies between the anonymous caller's
19 story and Altamirano's story are material to a determination of probable cause. Every
20 magistrate would want to have this information when considering the defendants'
21 applications for a warrant to arrest Sonny and warrant to search the house on
22 Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado truck.

23 139.24. EW1 told the defendants he was certain the vehicle
24 involved in the crime was a dark-colored car are material to a determination of
25 probable cause. Every magistrate would want to have this information when
26 considering the defendants' applications for a warrant to arrest Sonny and warrant
27 to search the house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado
28 truck.

1 139.25. The defendants knowingly and deliberately, or with
2 reckless disregard for the truth, made the misrepresentation to the magistrate that
3 created a falsehood in their applications for the warrants.

4 140. On information and belief, the affidavits filed to obtain the warrants also
5 contain the following misrepresentation to the magistrate:

6 *The shooting was gang related.*

7 140.1. The defendants were speculating about a motive for the
8 shooting. Every magistrate would want to have this information when considering
9 the defendants' applications for a warrant to arrest Sonny and warrant to search the
10 house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado truck.

11 140.2. The defendants did not have any evidence of a motive for
12 the shooting. Every magistrate would want to have this information when
13 considering the defendants' applications for a warrant to arrest Sonny and warrant
14 to search the house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado
15 truck.

16 140.3. The defendants did not have any evidence the shooting was
17 gang related. Every magistrate would want to have this information when
18 considering the defendants' applications for a warrant to arrest Sonny and warrant
19 to search the house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado
20 truck.

21 140.4. The defendants did not have any evidence that the shooting
22 was for the benefit of any criminal street gang. Every magistrate would want to have
23 this information when considering the defendants' applications for a warrant to
24 arrest Sonny and warrant to search the house on Stonewall Court and the plaintiffs'
25 2003 Chevrolet Silverado truck.

26 140.5. The defendants did not have any evidence that the shooting
27 was at the direction of a criminal street gang. Every magistrate would want to have
28 this information when considering the defendants' applications for a warrant to

1 arrest Sonny and warrant to search the house on Stonewall Court and the plaintiffs'
2 2003 Chevrolet Silverado truck.

3 140.6. The defendants did not have any evidence that the shooting
4 was in association with any criminal street gang. Every magistrate would want to
5 have this information when considering the defendants' applications for a warrant to
6 arrest Sonny and warrant to search the house on Stonewall Court and the plaintiffs'
7 2003 Chevrolet Silverado truck.

8 140.7. The defendants did not have any evidence that the shooting
9 was done with the specific intent to promote any criminal conduct by gang members.
10 Every magistrate would want to have this information when considering the
11 defendants' applications for a warrant to arrest Sonny and warrant to search the
12 house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado truck.

13 140.8. The defendants did not have any evidence that the shooting
14 was done with the specific intent to further any criminal conduct by gang members.
15 Every magistrate would want to have this information when considering the
16 defendants' applications for a warrant to arrest Sonny and warrant to search the
17 house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado truck.

18 140.9. The defendants did not have any evidence that the shooting
19 was done with the specific intent to assist in any criminal conduct by gang members.
20 Every magistrate would want to have this information when considering the
21 defendants' applications for a warrant to arrest Sonny and warrant to search the
22 house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado truck.

23 140.10. The defendants did not have any evidence that a gang
24 member perpetrated the crime. Every magistrate would want to have this
25 information when considering the defendants' application for a warrant to arrest
26 Sonny. Every magistrate would want to have this information when considering the
27 defendants' applications for a warrant to arrest Sonny and warrant to search the
28 house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado truck.

1 140.11. The defendants are trained to know that every street gang
2 member must have at least one tattoo representing his or her set or gang (e.g., "BRK"
3 for Broderick Boys in West Sacramento), but more often has several tattoos
4 representing his or her set or gang. Sonny has no such tattoos. Every magistrate
5 would want to have this information when considering the defendants' applications
6 for a warrant to arrest Sonny and warrant to search the house on Stonewall Court
7 and the plaintiffs' 2003 Chevrolet Silverado truck.

8 140.12. Every prison gang member must have at least one tattoo
9 representing his prison gang (e.g., "Nuestra Familia"), but more often than not has
10 several tattoos representing his prison gang and his street gang. Sonny has no such
11 tattoos. Every magistrate would want to have this information when considering the
12 defendants' applications for a warrant to arrest Sonny and warrant to search the
13 house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado truck.

14 140.13. Every member of the Nuestra Familia prison gang has at
15 least one tattoo of "Nuestra Familia" or "N.F." or a picture of a sombrero resting on a
16 dagger. Sonny has no such tattoos. Every magistrate would want to have this
17 information when considering the defendants' applications for a warrant to arrest
18 Sonny and warrant to search the house on Stonewall Court and the plaintiffs' 2003
19 Chevrolet Silverado truck.

20 140.14. The federal government documented the fact that Sonny
21 was free of any gang affiliations, associations, or ties of any kind at any time between
22 March 2007 and December 2012, and the defendants had no evidence -- not a shred --
23 that Sonny's status had changed after the federal government concluded its
24 investigation and made its findings in December 2012. Every magistrate would want
25 to have this information when considering the defendants' applications for a warrant
26 to arrest Sonny and warrant to search the house on Stonewall Court and the plaintiffs'
27 2003 Chevrolet Silverado truck.

28

1 140.15. The defendants have been trained to know that being a
2 member or former member or inactive member of a street gang is not a crime and is
3 an association protected by the First Amendment absent a court order prohibiting
4 the association, which does not exist regarding Sonny. Every magistrate would want
5 to have this information when considering the defendants' applications for a warrant
6 to arrest Sonny and warrant to search the house on Stonewall Court and the plaintiffs'
7 2003 Chevrolet Silverado truck.

8 140.16. The defendants knowingly and deliberately, or with
9 reckless disregard for the truth, made the misrepresentation to the magistrate that
10 created a falsehood in their applications for the warrants and application to seal the
11 warrants.

12 141. On information and belief, the affidavits filed to obtain the warrants also
13 contain the following misrepresentation to the magistrate:

14 *If any information within the requested sealed portion of the*
15 *Affidavit/Statement of Probable Cause Attachment A is*
16 *made public, it will reveal or tend to reveal the identity of*
17 *any confidential informant(s), impair further related*
 investigations and endanger the life of the confidential
 informant(s).

18 141.1. The representations were false.

19 141.2. The defendants did not have a related investigation
20 pending when the representation was made. The lead detective admitted he had
21 nothing, zip, zero, zilch, nothing to go on when Sonny was arrested.

22 141.3. The defendants knew that if Altamirano was telling the
23 truth about Sonny calling him to confess that Sonny would know who the informant
24 was as soon as the defendants asked Sonny who he called about the crime. And the
25 defendants knew that Altamirano's life was not in danger because they took no action
26 to protect Altamirano from harm despite their knowledge that, if Altamirano was
27 being truthful, Sonny would know he was the informant. Every magistrate would
28 want to have this information when considering the defendants' applications for a

1 warrant to arrest Sonny and warrant to search the house on Stonewall Court and the
2 plaintiffs' 2003 Chevrolet Silverado truck.

3 141.4. Altamirano's still lives in unit #10 of the housing complex
4 on South Harrison Street in Stockton, and has not lived anywhere else since Sonny
5 was arrested. Every magistrate would want to have this information when
6 considering the defendants' applications for a warrant to arrest Sonny and warrant
7 to search the house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado
8 truck.

9 141.5. The defendants knew that Altamirano's claim (and full
10 statement to police) was the material to the prosecution's case in chief and Sonny's
11 defense and under the *Brady* case they were required to give the evidence to Sonny's
12 public defender. Every magistrate would want to have this information when
13 considering the defendants' applications for a warrant to arrest Sonny and warrant
14 to search the house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado
15 truck.

16 141.6. The defendants knew that Altamirano's claim (and full
17 statement to police) was impeachment material they were required to give to Sonny's
18 public defender. Every magistrate would want to have this information when
19 considering the defendants' applications for a warrant to arrest Sonny and warrant
20 to search the house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado
21 truck.

22 141.7. The defendants knew that Altamirano's claim regarding
23 Sonny's alleged confession was material to Sonny's right to seek and obtain bail. Every
24 magistrate would want to have this information when considering the defendants'
25 applications for a warrant to arrest Sonny and warrant to search the house on
26 Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado truck.

27 141.8. The defendants knew that Sonny had a right to have all of
28 the ex-parte communications with the court bearing on the issue of bail. Every

1 magistrate would want to have this information when considering the defendants'
2 applications for a warrant to arrest Sonny and warrant to search the house on
3 Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado truck.

4 141.9. The defendants knew that Altamirano's claim regarding
5 Sonny' alleged confession was material to Sonny's right to confront the witnesses
6 against him in the criminal case. Every magistrate would want to have this
7 information when considering the defendants' applications for a warrant to arrest
8 Sonny and warrant to search the house on Stonewall Court and the plaintiffs' 2003
9 Chevrolet Silverado truck.

10 141.10. The defendants took no action to protect Altamirano from
11 retaliation. Every magistrate would want to have this information when considering
12 the defendants' applications for a warrant to arrest Sonny and warrant to search the
13 house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado truck.

14 141.11. Altamirano was rewarded or paid for the false information
15 he provided to the defendants. Every magistrate would want to have this information
16 when considering the defendants' applications for a warrant to arrest Sonny and
17 warrant to search the house on Stonewall Court and the plaintiffs' 2003 Chevrolet
18 Silverado truck.

19 141.12. The application to seal the probable cause affidavits was
20 made solely to cover up the defendants' illegal activates and deprive Sonny of his
21 constitutional rights to confront the witnesses against him, obtain bail, and receive
22 due process. Every magistrate would want to have this information when considering
23 the defendants' applications for a warrant to arrest Sonny and warrant to search the
24 house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado truck.

25 141.13. The application to seal the probable cause affidavits was
26 not presented to the magistrate for the reasons given to the magistrate or the reasons
27 authorized by law. Every magistrate would want to have this information when
28 considering the defendants' applications for a warrant to arrest Sonny and warrant

1 to search the house on Stonewall Court and the plaintiffs' 2003 Chevrolet Silverado
2 truck.

3 141.14. The defendants knowingly and deliberately, or with
4 reckless disregard for the truth, made the misrepresentation to the magistrate that
5 created a falsehood in their application to seal the probable cause affidavits.

6 142. On information and belief, the probable cause affidavits contain other
7 material misrepresentations and omissions that make a substantial, truthful
8 showing to support a probable cause determination impossible and create a falsehood
9 in the applications for the warrants.

10 143. Once the affidavits are re-written to comply with the law, there is not a
11 substantial basis for any magistrate to find probable cause.

12 144. The defendants arrested Sonny for investigation purposes only in the
13 hope that something might turn up to assist them with the stalled investigation into
14 the shooting.

15 145. Reasonably well-trained officers in the defendants' positions would have
16 known that complete and truthful warrant affidavits would not establish probable
17 cause and that he should not have applied for the warrants.

18 146. Reasonably well-trained officers in the defendants' positions would have
19 known the arrest of plaintiff Sonny Martinez was illegal and that he should not have
20 arrested Sonny.

21 147. The defendants did not have probable cause to conduct any of the
22 searches or property seizures they conducted, and each of those searches and seizures
23 were intentional and unreasonable.

24 148. The search warrant obtained by Winger at approximately 1:20 a.m. on
25 Tuesday, October 27, 2015, was an overly broad general search warrant.

26 149. Reasonably well trained officers in the defendants' positions would have
27 known the search warrant was an overly broad general search warrant and therefore
28 illegal and should not have been executed.

1 150. The defendants did not search Sonny truck or its contents until after the
2 truck and its contents were transported to the West Sacramento Police Department
3 headquarters in West Sacramento.

4 151. The defendants seized *everything* in Sonny's 2003 Chevrolet Silverado
5 truck, including the following personal property that belonged to Sonny, Jessica,
6 ARM, and EVM:

7 151.1. Sonny's hand tools, power tools, an air compressor, an air
8 brush, an engraving set, a jigsaw, Sonny's clothing, receipts, photographs, and
9 perhaps other property.

10 151.2. Jessica's 6 pair of women's pants, 4 pair of capris shorts, 8
11 tank tops, 10 shirts, 5 bras, 8 pair of underwear, 2 pair of sandals, 1 pair of tennis
12 shoes, 1 toothbrush, 1 tube of toothpaste, 1 hairbrush, 1 hair strainer, 1 makeup bag
13 (foundation, 2 cover-ups, 2 eyeshadows, 2 eyeliners, 1 blush), 1 fan, 1 iron, 2 pkgs. of
14 maxi pads, 3 blankets, 4 pillows, and 2 sets of sheets, and perhaps other proeprty.

15 151.3. ARM's 6 pair of pajamas, 10 pair of pants, 10 pair of shorts,
16 12 t-shirts, 8 tank tops, 5 pair of boxer shorts, 12 pair of socks, 1 pair of sandals, 1 pair
17 of tennis shoes, 1 pair of slippers, 1 blanket, 1 pillow, 1 set of sheets, 1 Teddy Bear, 1
18 stuffed Batman, 4 toy cars, Lego set, 1 play phone, 1 toy piano, 1 Mickey Mouse laptop,
19 and perhaps other property.

20 151.4. EVM's 6 pair of pajamas, 10 pair of pants, 15 pair of shorts,
21 12 t-shirts, 8 tank tops, 12 pair socks, 1 pair of sandals, 1 pair of tennis shoes, 1 pillow,
22 1 blanket, 1 box of 92 count Pampers diapers, 1 550 count box of baby wipes, 1 Teddy
23 Bear, 3 toy cars, 2 play telephones, 1 toy drum, 1 toy piano, and perhaps other property.

24 152. Jessica objected to the seizure and asked defendants to let her have the
25 items that belonged to her and ARM and EVM, but defendants refused and told her
26 they were taking and searching everything in the truck. Jessica told defendants she
27 needed the property, so Defendants knew that by taking the items that belonged to
28 Jessica, ARM, and EVM, they would create a hardship for Jessica, ARM, and EVM

1 with nothing but the clothes on their back and facing a significant economic burden
2 to replace the unlawfully seized items. The defendants would not even let Jessica get
3 diapers out of the truck, so ARM and EVM spent between 5-7 hours in dirty diapers.
4 The defendants took the plaintiffs property clothes to punish the plaintiffs.

5 153. The defendants did not have probable cause to seize everything in
6 Sonny's truck.

7 154. The defendants did not have legal authority to conduct the search in
8 West Sacramento.

9 155. The defendants seized every cell phone, tablet, and electronic device of
10 every person in the house Stonewall Court, including the cell phones belonging to
11 Raymond Orosco, Jr. and Mr. McDonald. But the defendants did not have probable
12 cause or a warrant to search or seize the cell phones or tablets or electronic devise
13 belonging to Ray or Mr. McDonald or Ray's son or ex-girlfriend or anyone else other
14 than Sonny Martinez.

15 156. The defendants took an unreasonable amount of time to conduct the
16 search of the house on Stonewall Court.

17 157. The defendants did not prepare or serve returns for any of the search
18 warrants, and did not provide Sonny or his public defender with a copy of any search
19 warrant returns. The defendants knew the search warrants returns were *Brady*
20 material that was required to be turned over to Sonny or his public defender.

21 158. The defendants served the unlawful search warrant for the house on
22 Stonewall Court using military assault weapons and tactics and force that were
23 unreasonable, excessive, and oppressive.

24 159. Sonny and ARM (age 2) were fast asleep together on one couch in the
25 living room next to the front door of the house, and Jessica (who is a very light sleeper)
26 and EVM (age 1) were asleep together on the smaller love seat in the living room next
27 to the front door of the house when the defendants broke down the front the door of
28 the home without knocking or announcing their presence.

1 160. The plaintiffs were sleeping when the paramilitary assault kicked off
2 and they did not pose any threat to the defendants.

3 161. The defendants' tactics for serving the warrants increased the risk and
4 danger that the plaintiffs would be harmed, and put the safety of the officers above
5 all other considerations, including the safety of the men, women, and very young
6 children they knew were in the home.

7 162. The defendants had plenty of opportunity to take Sonny into custody
8 without incident without using force of any kind and without launching a
9 paramilitary assault on the house on Stonewall Court and inflicting so much shock,
10 fright, and other emotional harm on the occupants.

11 163. The only danger was the grave danger and risk of harm the defendants
12 created with their unreasonable choice of tactics and deliberate indifference to
13 plaintiffs' rights under the Fourth and Fourteenth Amendments; none of the
14 occupants of the house posed an immediate threat to the safety of the officers or
15 others.

16 164. The defendants who participated in the raid did not comply with the
17 knock-announce-wait law, but instead smashed through the front door and charged
18 into the residence wearing dark clothing, dark masks, and screaming words at the
19 top of their lungs.

20 165. When the defendants encountered the plaintiffs in the front room of the
21 house:

22 165.1. The plaintiffs were unarmed.

23 165.2. The plaintiffs were waking to find masked gunmen in black
24 clothing invading the house.

25 165.3. The defendants were yelling loudly and yelling
26 inconsistent instructions to the plaintiffs. Some defendants were yelling, "FREEZE,"
27 and other defendants were yelling, "PUT YOUR HANDS UP." Plaintiffs were in fear
28

1 of an imminent gunshot because they each had one of their young sons in their arms
2 and could not comply with both commands.

3 165.4. The defendants were armed with loaded assault rifles.

4 165.5. The defendants were wearing black clothing and black ski-
5 type masks to conceal their faces.

6 165.6. The plaintiffs never threatened any of the defendants.

7 165.7. None of the occupants actively resisted or attempted to flee.

8 165.8. The defendants had more than 12 hours to consider their
9 options for executing the arrest warrant for Sonny and search warrant for the house
10 on Stonewall Court, and were not under time pressure to act.

11 165.9. The defendants had a number of alternative methods, like
12 arresting Sonny while he was outside and being surveilled or asking Sonny to come
13 outside, or waiting for Sonny to come outside to work or run errands, or creating a
14 ruse to lure Sonny out of the house.

15 165.10. The defendants pointed their loaded assault rifles at the
16 head and chest of Sonny and ARM, while Sonny and ARM were lying on the largest
17 couch in the room helpless, passive, unarmed, and in fear for their lives. And they
18 continued to point their assault rifles at Sonny and ARM until Sonny sat ARM down
19 on the couch and was handcuffed.

20 165.11. The defendants pointed their loaded assault rifles at the
21 head and chest of Jessica and EVM, while they were lying on the smallest couch in
22 the room helpless, passive, unarmed, and in fear for their lives. And they continued
23 to point their assault rifles at Jessica and EVM until Jessica sat EVM down on the
24 couch and was handcuffed.

25 165.12. Defendants had been trained to know, and did know, that
26 pointing an automatic assault rifle at passive, helpless, unarmed people at close
27 range constitutes excessive force and violates the Fourth Amendment.

28

1 165.13. And it was obvious to all defendants that pointing an
2 automatic assault rifle at one-year-old boy and two-year-old boy is blatantly
3 unreasonable, excessive, and reckless.

4 165.14. Sonny was ordered at gunpoint to set two-year-old ARM
5 down on the couch and to turn around and put his hands behind his back; Sonny
6 complied, and one of the defendants searched and handcuffed Sonny.

7 165.15. Jessica was ordered at gunpoint to set one-year-old EVM
8 down on the couch and to turn around and put her hands behind her back; Jessica
9 complied, and one of the defendants searched and handcuffed Jessica.

10 166. Sonny and Jessica repeatedly demanded to know what the defendants
11 wanted, but were told to be quiet and someone would explain it to them later.

12 167. Sonny repeatedly told the defendants that he was innocent of any
13 wrongdoing.

14 168. At one point, two defendants from the West Sacramento group of
15 defendants came in the house and one of them asked Sonny his name; when Sonny
16 told them who he was, the defendant said, "We got him." Sonny said, "What do you
17 mean you got him? What did I do? I didn't do anything." But Sonny was once again
18 told to be quiet and wait.

19 169. Sonny and Jessica observed what they believe to be at least another 20
20 or more defendants at the scene participating in execution of the warrants.

21 170. The armed defendants who entered the house disbursed throughout the
22 house conducting the search.

23 171. Raymond Orosco, Jr. was sleeping upstairs when the assault began.

24 172. When Raymond started walking down the stairs with his hands held
25 high above his head when he realized it was the police who invaded the house.

26 173. As Raymond got about half the way down the stairs he was met by a
27 defendant who was in full tactical gear and armed with an assault rifle.

28

1 174. The defendant was pointing his assault rifle at Raymond's head and
2 chest, and was trembling from fright.

3 175. Raymond told the defendant to stop pointing the assault rifle at him
4 because he was not resisting and was in fear of an imminent gunshot because the
5 defendant was shaking from fear.

6 176. Raymond kept his hands high above his head at all times to avoid being
7 shot by the scared officer.

8 177. The defendant got angry at Raymond for telling him to stop pointing his
9 gun at Raymond and grabbed Raymond's shirt at the shoulder and tried to turn
10 Raymond around and shove Raymond against the wall, but Raymond weighs over
11 300 lbs and cannot be moved that quickly or easily by anyone. The force was excessive,
12 unreasonable, oppressive, and reckless, particularly since Raymond and the armed
13 officer were on the stairs and not on level ground, and Raymond was not fully
14 complying with the scared officer's orders.

15 178. The defendant then began trying to pull Raymond down the stairs by
16 his shirt, but Raymond was able to avoid falling and injuring himself by just walking
17 down the steps in a bent fashion as the defendant was pulling him down the stairs by
18 his shirt. The force was excessive, unreasonable, oppressive, and reckless,
19 particularly since Raymond and the armed officer were on the stairs and not on level
20 ground, and Raymond was not fully complying with the scared officer's orders.

21 179. Once on level ground at the bottom of the stairs, Raymond was upset by
22 the use of reckless and excessive force and told the defendant to stop, but the
23 defendant told Raymond to shut up and slammed Raymond's head against the wall,
24 causing Raymond to hit his face against the wall and break his eyeglasses.

25 180. In addition to breaking the front door and door jamb, the defendants
26 who executed the warrants also broke a sprinkle next to the front door, which was
27 left spewing water through the front door and into the home for more than one hour
28 before the water off to the entire property.

1 181. A substantial area extending into the home from the front door was
2 flooded by defendants' recklessness indifference to the property rights of the
3 occupants and owners, who would have to pay for the cleanup and repair of the broken
4 front door and door jam, broken sprinkler, and the flooded wood flooring and
5 carpeting.

6 182. The defendants also pulled cabinets off the wall in the kitchen, broke
7 cabinet doors and drawers, opened the attic access and just left it open when they left,
8 pulled or tore an air vent right off the wall, broke fences in the back yard, tracked
9 mud and dirt throughout the house and onto the carpet, threw clothing and property
10 on the floor, and generally ransacked the house. The defendants were acting like
11 thugs who could care less about other peoples' rights.

12 183. The defendants seized property that was not listed in the search warrant.

13 184. The search took longer than reasonably necessary.

14 185. The defendants handcuffed Ray, Mr. McDonald, and Jessica for 2-3
15 hours or more.

16 186. The defendants held Ray, Mr. McDonald, Jessica, ARM, and EVM in
17 custody in handcuffs much longer than was reasonably necessary to complete the
18 search.

19 187. Jessica, EVM, and ARM were not the subjects of the investigation.

20 188. The defendants seized Jessica, ARM, and EVM in their home without
21 probable cause or a warrant.

22 189. The defendants seized Jessica's property without probable cause or a
23 warrant.

24 190. The defendants seized ARM's property without probable cause or a
25 warrant.

26 191. The defendants seized EVM's property without probable cause or a
27 warrant.

28

1 192. The male defendant who ordered Jessica to put EVM down and turn
2 around and put her hands behind her back sexually assaulted Jessica. The defendant
3 walked up behind Jessica and began to use both of his hands to feel her body without
4 her consent, without a warrant, and despite the fact that it was obvious she was not
5 armed or resisting or posing any threat to the defendants; he humiliated Jessica in
6 front of her husband as he used his hands to feel all around and between her breasts,
7 her crotch, her buttocks, her inner thighs around her crotch, and around the full
8 length of the rest of her arms and legs. Jessica was then handcuffed and made to sit
9 be Sonny near the table in the room while ARM and EVM remained alone on their
10 respective couches and without their parents. ARM and EVM were hysterical and in
11 obvious mental distress when they were forced to sit on the couch screaming and
12 crying for mommy because all of the masked gunman crashed into the house yelling
13 and screaming and threatening mommy and daddy. No reasonable officer would leave
14 harmless little boys sitting by themselves and plainly suffering severe emotional
15 distress. Such callousness is outrageous and oppressive.

16 193. Jessica was separated from her babies and her property and was told
17 she was not free to leave at least twice; She was tired, upset, and crying at times
18 because her babies were crying and calling for her at times and she could not comfort
19 them. Jessica was emotionally distraught at what was happening.

20 194. The searches could have been completed in less than 1 hour with the
21 number of defendants who were present to execute the warrant.

22 195. Jessica was also held in custody while the defendants searched a second
23 site on Kelley drive where Raymond's belongings had been moved.

24 196. Jessica was told she eventually told she should make arrangements for
25 someone to take care of her babies. So Jessica called her sister-in-law, Angelica, and
26 Angelica drove from Sacramento to the Stonewall Court house in Stockton and picked
27 up ARM and EVM, who were still crying most of the time and who continued to cry
28 all the way back to Sacramento because they wanted their mom.

1 197. While she was sitting handcuffed, one of the defendants asked Jessica
2 why there was a picture of the, "Norteno bird" hanging on the wall, but the picture
3 on the wall was not a "Norteno bird." It was a picture of the United Farm Workers
4 of America flag, which contains a picture of a Huelga bird or Aztec eagle. The
5 plaintiffs' family has a long and proud history of working the agricultural fields in
6 California and Ray makes and sells wooden Huelga birds and UFW flags as his hobby.

7 198. Jessica asked if she was free to leave with Angelica and the boys and was
8 told she was not free to leave. When Jessica asked why she was not free to leave, the
9 defendant just told her she was not free to leave in an oppressive and malicious tone.

10 199. Jessica was very tired, upset, and crying, but was not read her rights
11 and still answered all of the questions asked of her to the best of her ability while she
12 was in custody at the Stonewall Court location.

13 200. Jessica was eventually released from custody after about 5-7 hours,
14 perhaps more.

15 201. When she was released from custody, one of the West Sacramento
16 defendants asked her where she would be staying, and Jessica said she would be
17 staying in Sacramento. The West Sacramento defendants told her not to leave the
18 state or country because they may need to come back and arrest her or ask her some
19 more questions.

20 202. After Jessica was released, she called Angelica to come pick her up and
21 take her back to Sacramento to get her children. She had no transportation because
22 the defendants seized the truck, which was the only vehicle the family owned.

23 203. Defendants used excessive force to conduct the searches, and were
24 deliberately indifferent to the rights of others when they conducted the searches.

25 204. The defendants ransacked the house and what clothes remained in the
26 house; they broke the front door and front door jamb; they broke a sprinkler near the
27 front door and flooded the first floor entrance, hall, and nearby carpeting; they broke
28 cabinet doors and drawers; they threw property on the floor and walked all over the

1 clothing; they took apart the inside of Sonny truck and broke parts and wiring in the
2 process; they ransacked all of the bags and property in the back of Sonny's truck; and
3 when the court forced defendants to return Sonny's truck to him, the truck was not
4 drivable because defendants had removed the seat, dashboard, and other interior
5 parts of the truck and just thrown them back into the truck;

6 205. The same defendants who questioned released Jessica from custody in
7 Stockton showed up at plaintiff Joann Ramirez's house about an hour after Jessica
8 got back to the house from Stockton. Jessica, ARM, and EVM were staying with Joann
9 because they had no other place to go and had no transportation. Jessica was terrified
10 because she thought she was going to be arrested and taken away from her children
11 and family even though she knew she had done nothing wrong.

12 206. The defendants asked Joann if Sonny had anything at the house. When
13 Joann said Sonny did not have anything at the house, the defendants asked her if
14 they could search her house anyway. Joann asked the defendants if they had a search
15 warrant and they told her they did not have a warrant. Joann knew Sonny was not
16 capable of doing what he had been accused of doing and told the officers she would
17 consent to a search but that Sonny did not have anything at her house; the defendants
18 elected not to search the house, and instead asked Joann to have Jessica come to the
19 door.

20 207. Again, Jessica was very upset because she thought she was going to be
21 arrested and separated from her children and family, but the defendants did not
22 arrest her; they harassed her instead, with threats and intimidation. The defendants
23 ordered Jessica not to leave the residence in case they needed to come back and arrest
24 her or ask her more questions. Jessica was terrified by the defendants and was afraid
25 if she left the residence she would be arrested. So Jessica did not leave the residence
26 *at all* for more than 30 days because the defendants ordered her not to leave. And the
27 defendants were not done harassing Jessica.

28

6 WHEREFORE, the plaintiffs pray for judgment as set forth below.

(Fourteenth Amendment)

25 220. Defendants mislead the magistrate to obtain the order to seal the
26 probable cause affidavits because they knew Sonny could not make bail or otherwise
27 challenge his incarceration without the information and they wanted Sonny in jail as
28 an investigative tool to expose to informants and make and receive communications

1 to monitor for anything that might help the revive the stalled investigation into the
2 shooting.

3 221. Sonny was wrongfully incarcerated in the Yolo County jail for 53 days,
4 and under threat the charges could be refilled until February 23, 2016, when the
5 Court ordered the defendants to return the property they seized and the defendants
6 finally announced they would not refile the charges against Sonny because they did
7 not have any evidence that he committed the crime.

8 222. The defendants knew at the time the criminal charges were filed against
9 Sonny that he was innocent.

10 223. The defendants knew at the time the criminal charges were filed against
11 Sonny that he did not call Altamirano and confess to the shooting.

12 224. The defendants knew at the time the criminal charges were filed against
13 Sonny that they did not have probable cause to file the charges.

14 225. Defendants arrested Sonny for investigation purposes only in the hope
15 that something might turn up to assist them with their stalled investigation into the
16 shooting.

17 226. The defendants knew if they gave the sealed documents to Sonny's
18 public defender that Sonny would have the charges dismissed and he would be
19 released from jail before they could expose him to informants in jail and monitor his
20 communications.

21 227. The defendants knew Sonny would pose no threat to Altamirano or the
22 Altamirano family when he discovered what Altamirano had done. And Altamirano
23 has no fear of Sonny hurting him or hurting his family as evidenced by his behavior.
24 Altamirano is easy to fond, follow, photograph, and approach; he regularly goes
25 outside of his unit at the South Harrison Street housing complex to work on cars in
26 his driveway area, which is a dangerous place to work if he is concerned about a drive
27 by shooting or someone walking up and hurting him while he is under a car working
28 and distracted. Altamirano also drives around Stockton and makes no effort to stay

1 inconspicuous to protect himself from harm. Every magistrate considering the
2 warrant applications presented by the defendants would want to have this
3 information when considering the applications.

4 228. Sonny had no connection to the victim or her family.

5 229. Sonny had no motive to commit the crime.

6 230. The defendants had no evidence that Raymond Orosco, Jr. was involved
7 in the shooting of Alize Valadez.

8 231. Within minutes after the defendants arrived at the house on Stonewall
9 Court to execute the warrants, they had the following additional information and
10 knew it was true and exculpatory:

11 231.1. The call log on Sonny's cell phone did not contain any calls
12 to Altamirano after the shooting, and the other digital evidence on Sonny's cell phone
13 proved that did not call Altamirano and confess to the shooting like Altamirano
14 claimed.

15 231.2. Plaintiffs do not own a dark colored passenger car like the
16 one EW1 observed to be involved in the shooting.

17 231.3. Sonny's truck did not match the description of the truck
18 described by the so-called anonymous caller;

19 231.4. Altamirano claim that the rims on Sonny's truck were
20 chrome with some remnants of the black vinyl paint was not true; the rims on the
21 truck were almost all black;

22 231.5. If Sonny's truck were used in the commission of the Alize
23 Valadez shooting, then there would have been gunshot residue deposited throughout
24 the inside of cab when the shots were fired;

25 231.6. If Sonny's truck were used in the commission of the Alize
26 Valadez shooting, then there would have been gunshot residue deposited on the truck
27 body near the open window through which the gunman would have had to fire in a
28 drive-by shooting;

1 231.7. The gunshot residue would have been present and
2 detectable when Sonny's truck was seized on October 27, 2015;

3 231.8. Sonny's truck was dirty and had obviously not been painted,
4 washed, or wiped down on the inside or outside for a very long time before the crime.

5 232. Before they booked Sonny into the Yolo County jail in the late afternoon
6 on October 26, 2015, the defendants had the following additional information and
7 knew it was true and exculpatory:

8 232.1. After he was handcuffed, Sonny began asking the
9 defendants at the house on Stonewall Court what was going on and who were they
10 looking for, but the defendants told him to be quiet;

11 232.2. Two officers wearing khaki pants and light blue, long-
12 sleeved shirts asked Sonny what his name, and when Sonny told them his name, one
13 of the defendants said, "We got him." Sonny immediately asked the defendants,
14 "You've got who? I didn't do anything wrong." One of the defendants then ordered
15 Sonny to stand up and he escorted Sonny to a police vehicle parked next to Sonny's
16 truck. Sonny asked the defendant again, "what did I do?" The defendant told Sonny
17 to be quiet and they will let him know later;

18 232.3. Sonny was able to observe what was going on around the
19 police vehicle and his truck before the same two defendants with the khakis and light
20 blue shirts got into the vehicle and drove away from the scene with Sonny in custody
21 in the back seat. Sonny asked the defendants where they were going and the
22 defendant sitting in the passenger seat told Sonny they were taking him to West
23 Sacramento. Then he asked Sonny what he [Sonny] could tell him about the 13-year-
24 old girl getting shot in the head with a .357 over the weekend, and Sonny said he
25 could not tell him anything. Sonny told the defendants that Altamirano came over to
26 his house and asked him the same question the day before and Sonny told Rafa he
27 did not know anything about the shooting. There was no television in the house on
28 Stonewall Court while the plaintiffs lived there, and they did not buy papers or listen

1 to news on the radio. Sonny then asked the defendant, "you don't think I did it do
2 you?" And the defendant asked Sonny who he had called. The defendant told Sonny
3 they had two calls putting you in West Sacramento at the time of the shooting and
4 he [Sonny] was lying. Sonny kept pleading his innocence and telling the defendants
5 they had the wrong man. Sonny went back and forth with the two defendants all the
6 way from Stockton to the police station in West Sacramento, and Sonny repeatedly
7 told the defendants he was innocent and that they had the wrong person and bad
8 information.

9 232.4. Once at the police station, the defendants put Sonny in a
10 room and left him in the room handcuffed to the table for about two hours to punish
11 him for proclaiming his innocence. When the defendants returned to the room, they
12 again told Sonny that they had information from two people that put you at the crime
13 scene, and Sonny said, "bullshit, I was in Stockton. Plus, I don't go to West Sac for
14 any reason." The defendants then said, "Come on, two people Sonny," to which Sonny
15 replied that he had not done anything and was a family man living in Stockton." The
16 defendants left the room and left Sonny handcuffed to the table for another two hours
17 to punish him some more for continuing to proclaim his innocence and telling the
18 defendants they were on the wrong track. When the defendants re-entered the room,
19 they slammed a folder down on the table in front of Sonny and were obviously angry
20 that Sonny was maintaining his innocence. The defendants said, "Sonny, you said
21 you were doing nothing bad, that you were clean." Sonny said that was true, and the
22 defendants lied to Sonny to try to scare him into making a false confession. They told
23 Sonny the FBI was watching him, and then put a picture down in front of Sonny that
24 looked like a soda can and around cake that were painted green and told Sonny the
25 picture was of bombs Sonny sold to someone. Sonny knew the defendants were lying
26 and told them if he was selling bombs he would be in federal custody and to go ahead
27 and call the FBI because if they were following him, they could tell the defendants
28 that he did not do the shooting and was in Stockton when the shooting happened. The

1 defendants' demeanors were ones of obvious frustration and anger, and they told
2 Sonny the FBI had just quit watching him because they did not have enough to arrest
3 him. Sonny replied that selling bombs is enough to arrest him, which made the
4 defendants even angrier. They took the picture of the "bombs" back, turned it over
5 and put it under their folder and moved to the next coercive tactic – more lies. They
6 took out another photo and put it down on the table in front of Sonny and asked Sonny
7 whose gun was in the picture. Sonny denied knowing anything about the gun, but it
8 was not the one used in the crime because the officers told Sonny on the drive from
9 Stockton to West Sacramento that the gun used in the crime was a .357 and the gun
10 in the picture looked like a .32 or .38 caliber. One of the defendants then asked Sonny
11 if his finger prints were going to turn up on the gun, and Sonny said no. Sonny told
12 the officer to go ahead and finger print him, that his finger prints are not on the gun.
13 When the defendants said they had two witnesses and Sonny said, "bring them." One
14 of the defendants told Sonny that one of the witnesses said they saw a heavy set guy
15 driving a white truck, and Sonny said, "do you know how many heavy set guys there
16 are that drive a white truck?" The defendants then told Sonny he called the other
17 witness and told him what you did, to which Sonny replied you are kidding me, right?
18 Sonny demanded to see his phone so he could show the defendants that whoever was
19 giving them that information was lying. One of the defendants then said, we know
20 you take orders from higher and accused Sonny of being a gangster. Sonny denied the
21 charge and protested being arrested on hearsay. Sonny reiterated his request to take
22 a lie detector test. Sonny also told the defendants he would take any other test they
23 wanted to give him to prove he was innocent. Sonny then told the defendants he was
24 tired and hungry, and the defendants left. After about twenty minutes, one of the
25 defendants returned to the room with about 5 peanuts on a napkin and Sonny said
26 that was not enough food, to which the defendant replied, "that's all there is."
27 Defendants left Sonny handcuffed to the table for another 1-2 hours to punish him
28 for maintaining his innocence. Defendants then returned and told Sonny he was

1 going to jail. Sonny kept telling the defendants he was innocent and did not do it, but
2 his pleas of innocence were disregarded. Sonny asked the defendant who took him to
3 jail how he was going to feel knowing he put an innocent man in jail, and the
4 defendant replied in a smart-alecky way, "I will be here when you get out to apologize."
5 But the defendant was not there to apologize to Sonny when Sonny was released from
6 jail.

7 233. Sonny was very cooperative with defendants, and demanded that hey
8 check his cell phone to see that whoever said he called them was lying, and give him
9 a lie detector test, DNA test, gunshot residue test. Sonny's cooperation and demands
10 are not typical of a guilty person.

11 234. The defendants deprived Sonny of his right to due process by having the
12 probable cause affidavits and other warrant documents sealed under false pretenses.

13 235. None of the defendants bothered to ask Sonny if he was an active street
14 gang member.

15 236. None of the defendants asked Sonny if he was a prison gang member.

16 237. None of the defendants asked Sonny if he had any street gang tattoos.

17 238. None of the defendants asked Sonny if he had any prison gang tattoos.

18 239. Sonny adamantly maintained his innocence to defendant.

19 240. Sonny demanded a lie detector test, but the defendants told Sonny they
20 did not have anyone who could administer the test; the defendants could have
21 arranged for Sonny to give a lie detector test, but the defendants were deliberately or
22 recklessly indifferent to the truth and wanted Sonny in jail for investigative reasons.

23 241. Sonny demanded that the defendants check his phone to see that he did
24 not call whoever the defendants alleged that he called, but the defendants were
25 deliberately or recklessly indifferent to the truth and wanted Sonny in jail for
26 unlawful reasons.

27 242. The defendants took a DNA swab from Sonny's mouth.

28

1 243. Sonny demanded a gunshot residue test, which was taken on October
2 27, 2105 and was negative for gunshot residue on Sonny and his truck.

3 244. Sonny's truck was thoroughly tested for gunshot residue on October 27,
4 2015 and all of the tests for gunshot residue inside and outside of Sonny's truck were
5 negative for gunshot residue.

6 245. Sonny's truck was not used in the crime or the lead detective admitted
7 on video that gunshot residue would have been found in the truck.

8 246. The defendants did not read Sonny his rights until they were booking
9 him into the Yolo County jail.

10 247. On or before November 3, 2015, the defendants had the following
11 additional information and knew it was true and exculpatory:

12 247.1. Sonny's cell phone was in Stockton at the time of the crime;

13 247.2. Sonny called his mother from Stockton at 8:25 p.m. on
14 Saturday, October 24, 2015, and talked to his mother for 19 minutes;

15 247.3. Sonny's cell phone bill and usage records did not contain
16 any record of any calls to Altamirano after the Alize Valadez shooting;

17 247.4. Sonny's cell phone bills and usage records did not contain
18 any record of any calls to Altamirano at any time;

19 247.5. Sonny was and is innocent of the charges filed against him.

20 248. The individual defendants induced the Yolo County District Attorney's
21 office to prosecute Sonny by their fraud, corruption, perjury, fabricated evidence, or
22 other wrongful conduct undertaken in bad faith.

23 249. Plaintiff Sonny Martinez was arraigned in Yolo County Superior Court
24 on October 29, 2015, but the defendants concealed the exculpatory information they
25 possessed at that time because they wanted Sonny in jail for investigation purposes.

26 250. The defendants unreasonably delayed proceeding with the probable
27 cause determination at a preliminary hearing to continue investigating Sonny.

28

1 251. The defendants did not disclose to Sonny or his public defender the ex-
2 parte information they provided to the court before the bail hearing.

3 252. Defendants acted with deliberate indifference, or reckless disregard, for
4 plaintiffs' rights and the truth in withholding and concealing evidence that strongly
5 indicated Sonny's innocence of the crimes for which he was charged; and they
6 continued to incarcerate Sonny after it was, or should have been, known that Sonny
7 was entitled to be released.

8 253. Sonny was arraigned on October 29, 2015, and was appointed counsel
9 because of his indigence. The defendants concealed the exculpatory evidence they had
10 at that time from the court, from Sonny, and from Sonny's newly appointed public
11 defender, and had they turned that evidence over at that time as required by law
12 Sonny could have proved his innocence immediately and been out of jail and back at
13 home with his family immediately.

14 254. As soon as Sonny was put in jail, the defendants began monitoring and
15 recording his phone calls and reading his mail, and continued to monitor and record
16 his phone calls and read his mail until he was released from jail on December 18,
17 2105.

18 255. A preliminary hearing in Sonny's criminal case was scheduled for
19 December 18, 2015, which was the 53rd day after Sonny was first jailed. The purpose
20 of the preliminary hearing is for the defendants to prove there is probable cause for
21 the charges and enhancements the defendants leveled against Sonny and that the
22 defendants were using to keep Sonny behind bars to aid in their investigation of the
23 Alize Valadez shooting. And while continuing to concealing the overwhelming
24 exculpatory evidence of Sonny's innocence, the defendants asked for their fourth
25 continuance of the preliminary hearing.

26 256. The defendants deprived Sonny of the companionship and society of the
27 other plaintiffs, and the other plaintiffs of the companionship and society of Sonny.

28

258. The plaintiffs suffered compensatory damages and special damages for lost earnings and lost earning capacity and medical care as an actual and proximate result of the defendants' misconduct. The defendants acted with malice, oppression, and fraud and otherwise engaged in misconduct to justify the imposition of punitive damages.

9 **THIRD CLAIM FOR RELIEF**
10 **(Eighth Amendment)**

260. Plaintiffs bring this claim for relief under 42 U.S.C. § 1983 to redress the deprivation of Sonny's Eighth Amendment rights regarding bail. This claim for relief is brought against all of the individual defendants in their individual capacities.

22 262. The defendants filed ex-parte affidavits with the court bearing on
23 Sonny's right to bail, but failed to disclose the ex-parte communications to Sonny and
24 his public defender which, if disclosed, would have resulted in a dismissal of the
25 charges.

28

1 264. The defendants deprived Sonny of the companionship and society of the
2 other plaintiffs, and the other plaintiffs of the companionship and society of Sonny.

3 265. The plaintiffs suffered compensatory damages and special damages for
4 lost earnings and lost earning capacity and medical care as an actual and proximate
5 result of the defendants' misconduct. The defendants acted with malice, oppression,
6 and fraud and otherwise engaged in misconduct to justify the imposition of punitive
7 damages.

8 WHEREFORE, the plaintiffs pray for judgment as set forth below.

9 **FOURTH CLAIM FOR RELIEF**

10 **(Malicious Prosecution)**

11 266. Plaintiffs incorporate the allegations in paragraphs 259 through 265
12 into this claim for relief.

13 267. Plaintiffs bring this claim under 42 U.S.C. § 1983 to redress the
14 deprivation of Sonny's rights under the First, Fourth, Eighth, and Fourteenth
15 Amendments. This claim is against all of the individual defendants in their individual
16 capacities.

17 268. The individual defendants were actively instrumental in causing the
18 Yolo County District Attorney to initiate the criminal proceeding against Sonny. They
19 induced the prosecution by their fraud, corruption, perjury, fabricated evidence, or
20 other wrongful conduct undertaken in bad faith.

21 269. The defendants procured the arrest of Sonny and prosecuted Sonny with
22 malice and without probable cause for the purpose of denying Sonny his
23 constitutional rights.

24 270. The defendants sought the continuances of the preliminary hearing
25 because they knew they did not have probable cause for their actions and knew they
26 would lose the ability to keep Sonny incarcerated to carry out their plan to see they
27 could learn something to help them solve the Alize Valadez shooting; they also

28

1 wanted to avoid having to make a public record of their misconduct if they went
2 forward with the preliminary hearing.

3 271. The criminal prosecution was without probable cause and was part of
4 the plan or object of the conspiracy among all of the individual defendants.

5 272. Sonny was targeted by the defendants in part because of his prior
6 associations in violation of his rights under the First Amendment.

7 273. The defendants induce the criminal prosecution as part of the
8 conspiracy, and induced the criminal prosecution as part of the conspiracy despite
9 knowing Sonny was not guilty of any of the crimes he was charged with committing.
10 And all of the defendants knew that the prosecution could not meet its burden of proof
11 at the preliminary hearing, so caused the preliminary hearing to be postponed for as
12 long as possible in deliberate or reckless disregard of the Plaintiffs' constitutional
13 rights.

14 274. The defendants unreasonably delayed proceeding with the probable
15 cause determination at a preliminary hearing, and gave false information to the court
16 and Sonny's public defender to secure a continuance. On information and belief, the
17 gang expert for the People was not in training on the day of the preliminary hearing
18 as the individual defendants led the prosecuting attorney to believe and so advise the
19 judge.

20 275. Sonny case was scheduled for trial beginning on December 18, 2015, so
21 the same two West Sacramento defendants paid Jessica a second visit at plaintiff
22 Joann Ramirez's home in Sacramento. Jessica was again afraid they were there to
23 arrest her and she began crying. She did not feel free to leave to return to the family
24 in the house. The defendants told her to step outside of the house and told her to step
25 into the garage where nobody could see them talking. They asked Jessica if Sonny
26 shot the girl and if Sonny shot the girl on orders from "upstairs." Jessica told the
27 defendants Sonny did not shoot the girl and that she and Sonny moved from Stockton
28 to get away from all the gang activity in south Sacramento. The defendants then told

1 Jessica they had a note that Sonny wrote "saying differently." Jessica did not believe
2 the defendants and she told them to show her the note; one of the defendants flashed
3 a piece of paper at Jessica really quickly and she could tell that it was not written by
4 Sonny and told the defendants so. Next, the defendants said they had proof from her
5 Facebook and Instagram account that she went onto the victim's brother's Instagram
6 page and said Sonny is the one who pulled the trigger and shot your sister, which
7 Jessica knew was a lie. She asked to see the note again, but the defendants only
8 flashed a paper at her and said, "see." They would not let her get a good look at the
9 paper or writing on the paper. Jessica knew they were lying and told them so, and
10 told the defendants that they did not have any proof against Sonny because he did
11 not do it (i.e., the crime). The defendants said they had a lot of evidence against
12 Sonny, and by that point, they were visibly upset and began threatening Jessica; they
13 talked down to Jessica in a demeaning way, and were trying to coerce her into telling
14 them what they wanted to hear. The defendants told Jessica that if they find Sonny
15 guilty they would be back to arrest Jessica for conspiracy; one of the defendants then
16 said if Sonny walks free because there is no evidence that he would come back to the
17 house and apologize to Jessica and the family. The next day the Yolo County District
18 Attorney sought a continuance of the trial, which was denied, and the court forced
19 the District Attorney's representative to either proceed or dismiss the case for lack of
20 evidence. The District Attorney was forced to dismiss the case for lack of evidence,
21 thereby admitting they never had probable cause to believe Sonny committed any of
22 the crimes they pile on him to keep him jail. And neither one of the thugs who
23 threatened Jessica that day came back and apologized to Jessica or Sonny's family.

24 276. Two defendants also harassed and threatened to arrest Raymond Orosco,
25 Jr., Sonny's cousin, if he did not give Sonny up. They played a recording of one of
26 Sonny's telephone calls while he was incarcerated in the Yolo County jail, and claimed
27 Sonny gave him up as a co-conspirator in the crime. And they called Sonny a "piece
28

1 of shit" and told Raymond that he did not want to protect that piece of shit. Ray knew
2 the defendants were lying because he and Sonny are innocent.

3 277. The plaintiffs suffered compensatory damages and special damages for
4 lost earnings and lost earning capacity and medical care as an actual and proximate
5 result of the defendants' misconduct. The defendants acted with malice, oppression,
6 and fraud and otherwise engaged in misconduct to justify the imposition of punitive
7 damages.

8 WHEREFORE, the plaintiffs pray for judgment as set forth below.

9 **FIFTH CLAIM FOR RELIEF**

10 **(Abuse of Process)**

11 278. In addition to the allegations in this claim for relief, Plaintiffs
12 incorporate the allegations in paragraphs 266 through 277 into this claim for relief.

13 279. Plaintiff Sonny Martinez brings this claim under 42 U.S.C. § 1983 to
14 redress the deprivation of his rights under the Fourth, Eighth, and Fourteenth
15 Amendments by maliciously prosecuting him for crimes the defendants knew he did
16 not commit. This claim is against all of the individual defendants in their individual
17 capacities.

18 280. The defendants intentionally, deliberately, or recklessly abused the
19 affidavit sealing process, continuance process, and other processes in the criminal
20 case against Plaintiff Sonny Martinez to keep him incarcerated as long as possible in
21 the hope that his incarceration would turn up information to aid them in solving the
22 Alize Valadez shooting.

23 281. Defendants cased the processes available in the criminal case against
24 Sonny to be used for unlawful reasons that violated Sonny's constitutional rights.

25 282. The defendants' unlawful acts and omissions were a substantial factor
26 in causing Sonny harm and depriving Sonny of his constitutional rights.

27 283. The plaintiffs suffered compensatory damages and special damages for
28 lost earnings and lost earning capacity and medical care as an actual and proximate

1 result of the defendants' misconduct. The defendants acted with malice, oppression,
2 and fraud and otherwise engaged in misconduct to justify the imposition of punitive
3 damages.

4 **SIXTH CLAIM FOR RELIEF**

5 **(False Arrest and Imprisonment)**

6 284. In addition to the allegations in this claim for relief, Plaintiffs
7 incorporate the allegations in paragraphs 278 through 283 into this claim for relief.

8 285. The individual defendants were acting in the course and scope of their
9 employment.

10 286. The defendants intentionally subjected Sonny, Jessica, ARM, and EVM
11 to false arrest, and confined them and deprived of their freedom to leave for lengthy
12 periods of time without their consent or lawful privilege to do so.

13 287. The defendants subjected Sonny to false imprisonment for more than 3
14 months without his consent or lawful privilege to do so.

15 288. Sonny, Jessica, ARM, and EVM were harmed by the tortious conduct of
16 the defendants.

17 289. The defendants conduct was a substantial factor in causing the harm
18 sustained by Sonny, Jessica, ARM, and EVM.

19 290. The plaintiffs suffered compensatory damages and special damages for
20 lost earnings and lost earning capacity and medical care as an actual and proximate
21 result of the defendants' misconduct. The defendants acted with malice, oppression,
22 and fraud and otherwise engaged in misconduct to justify the imposition of punitive
23 damages.

24 **SEVENTH CLAIM FOR RELIEF**

25 **(Unreasonable Search and Seizure)**

26 291. Plaintiffs incorporate the allegations in paragraphs 284 through 290
27 into this claim for relief.

28

293. The plaintiffs suffered compensatory damages and special damages for lost earnings and lost earning capacity and medical care as an actual and proximate result of the defendants' misconduct. The defendants acted with malice, oppression, and fraud and otherwise engaged in misconduct to justify the imposition of punitive damages.

(Assault)

27 303. Neither Sonny, Jessica, ARM, nor EVM consented to the defendants'
28 conduct.

1 304. Sonny, Jessica, ARM, and EVM were harmed, and deprived of their
2 peace of mind and right to live without fear of personal harm.

3 305. The defendants conduct was a substantial factor in causing the harm
4 suffered by Sonny, Jessica, ARM, and EVM.

5 306. The plaintiffs suffered compensatory damages and special damages for
6 lost earnings and lost earning capacity and medical care as an actual and proximate
7 result of the defendants' misconduct. The defendants acted with malice, oppression,
8 and fraud and otherwise engaged in misconduct to justify the imposition of punitive
9 damages.

10 WHEREFORE, the plaintiffs pray for judgment as set forth below.

11 **EIGHTH CLAIM FOR RELIEF**

12 **(Battery)**

13 307. In addition to the allegations in this claim for relief, Plaintiffs
14 incorporate the allegations in paragraphs 294 through 306 into this claim for relief.

15 308. The defendants touched Sonny and Jessica in harmful and offensive
16 ways with the intent to harm or offend them.

17 309. The defendants used excessive force against Sonny, Jessica, ARM, and
18 EVM to execute the unlawful warrants.

19 310. Neither Sonny nor Jessica consented to the touching.

20 311. Sonny and Jessica were harmed, and deprived of their interest in
21 freedom from intentional unlawful, harmful, or offensive contact with their bodies.

22 312. Each of the individual defendants committed, aided or abated the
23 battery.

24 313. The defendants conduct was a substantial factor in causing the harm
25 suffered by Sonny and Jessica.

26 314. The plaintiffs suffered compensatory damages and special damages for
27 lost earnings and lost earning capacity and medical care as an actual and proximate
28 result of the defendants' misconduct. The defendants acted with malice, oppression,

1 and fraud and otherwise engaged in misconduct to justify the imposition of punitive
2 damages.

3 WHEREFORE, the plaintiffs pray for judgment as set forth below.

4 **NINTH CLAIM FOR RELIEF**

5 **(Intentional Infliction of Emotional Distress)**

6 315. In addition to the allegations in this claim for relief, Plaintiffs
7 incorporate the allegations in paragraphs 307 through 314 into this claim for relief.

8 316. The defendants conduct was extreme and outrageous, and done in
9 furtherance of the conspiracy.

10 317. The defendants intended to cause plaintiffs Sonny, Jessica, ARM, and
11 EVM emotional distress, or deliberately or recklessly disregarded the probability that
12 plaintiffs would suffer emotional distress, knowing that plaintiffs were each present
13 when the outrageous conduct occurred.

14 318. Plaintiffs suffered severe and extreme emotional distress.

15 319. The defendants conduct was a substantial factor in causing Sonny,
16 Jessica, ARM, and EVM to suffer emotional distress.

17 320. Each of the individual defendants committed, aided or abated the
18 intentional infliction of emotional distress.

19 321. The plaintiffs suffered compensatory damages and special damages for
20 lost earnings and lost earning capacity and medical care as an actual and proximate
21 result of the defendants' misconduct. The defendants acted with malice, oppression,
22 and fraud and otherwise engaged in misconduct to justify the imposition of punitive
23 damages.

24 WHEREFORE, the plaintiffs pray for judgment as set forth below.

25 **TENTH CLAIM FOR RELIEF**

26 **(Conversion)**

27 322. In addition to the allegations in this claim for relief, Plaintiffs
28 incorporate the allegations in paragraphs 315 through 321 into this claim for relief.

1 and fraud and otherwise engaged in misconduct to justify the imposition of punitive
2 damages.

3 WHEREFORE, the plaintiffs pray for judgment as set forth below.

4 **TWELFTH CLAIM FOR RELIEF**

5 **(Cal. Civ. Code 52.1)**

6 333. In addition to the allegations in this claim for relief, Plaintiffs
7 incorporate the allegations in paragraphs 328 through 332 into this claim for relief.

8 334. Plaintiffs bring this claim for treble damages against all defendants
9 under The Tom Bane Civil Rights Act, California Civil Code § 52.1.

10 335. Defendants interfered with plaintiffs' exercise and enjoyment of their
11 rights under the Constitution and laws of the United States and state of California
12 by actual and attempted threats, intimidation, and coercion.

13 336. The defendants conduct was a substantial factor in causing the harm
14 suffered to the plaintiffs.

15 337. The plaintiffs suffered compensatory damages and special damages for
16 lost earnings and lost earning capacity and medical care as an actual and proximate
17 result of the defendants' misconduct. The defendants acted with malice, oppression,
18 and fraud and otherwise engaged in misconduct to justify the imposition of punitive
19 damages.

20 WHEREFORE, the plaintiffs pray for judgment as set forth below.

21 **THIRTEENTH CLAIM FOR RELIEF**

22 **(Loss of Consortium)**

23 338. Plaintiffs incorporate the allegations in paragraphs 333 through 337
24 into this claim for relief.

25 339. Plaintiffs Sonny Martinez and Jessica Martinez bring this claims
26 against the defendants for loss of consortium.

27

28

1 340. The defendants conduct caused Sonny and Jessica to lose the conjugal
2 society, comfort, affection, companionship, moral support of the other while Sonny
3 was incarcerated.

4 341. The defendants conduct was a substantial factor in causing the harm
5 suffered to the plaintiffs.

6 342. The plaintiffs suffered compensatory damages and special damages for
7 lost earnings and lost earning capacity and medical care as an actual and proximate
8 result of the defendants' misconduct. The defendants acted with malice, oppression,
9 and fraud and otherwise engaged in misconduct to justify the imposition of punitive
10 damages.

11 WHEREFORE, the plaintiffs pray for judgment as set forth below.

12 **FOURTEENTH CLAIM FOR RELIEF**

13 **(Negligence)**

14 343. Plaintiffs incorporate the allegations in paragraphs 338 through 342
15 into this claim for relief.

16 344. The defendants were grossly negligent.

17 345. The plaintiffs were harmed by the defendants' gross negligence.

18 346. The plaintiffs suffered severe and extreme emotional distress.

19 347. The defendants' gross negligence was a substantial factor in causing
20 plaintiffs harm.

21 348. The plaintiffs suffered compensatory damages and special damages for
22 lost earnings and lost earning capacity and medical care as an actual and proximate
23 result of the defendants' misconduct. The defendants acted with malice, oppression,
24 and fraud and otherwise engaged in misconduct to justify the imposition of punitive
25 damages.

26 WHEREFORE, the plaintiffs pray for judgment as set forth below.

27

28

1 **PRAYER FOR RELIEF**

2 349. Compensatory damages.

3 350. Special damages for the medical expenses to treat plaintiff Joann
4 Ramirez's two heart attacks, and the cost of future medical and related care because
5 of her two heart attacks.

6 351. Treble damages.

7 352. Punitive damages against each of the individual defendants.

8 353. An order to the defendants to account for all of the property they seized,
9 and an order for the defendants to return the plaintiffs property, including all
10 duplicates and copies, in their possession, custody, or control.

11 354. Cost of suit, including reasonable attorney fees.

12 355. Reasonable attorney fees.

13 356. All other relief authorized by law or that the Court deems just.

14

15

16 October 27, 2016

/s/ Douglas R. Thorn

17

Douglas R. Thorn
Attorney for Plaintiffs

18

19

20

21

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23

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25

26

27

28

FOR COURT USE ONLY

FILED

16 DEC -1 AM 9:27

DOUGLAS B. CLERK

BY _____

JURY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Street number, and address):

Larry S. Buckley 183916
Law Offices of Larry S. Buckley
1660 Humboldt Road, Suite 5
Chico, California 95928

TELEPHONE NO.: (530) 343-3695

FAX NO. (Optional): (530) 343-3110

E-MAIL ADDRESS (Optional):

ATTORNEY FOR (Name): Plaintiffs

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Joaquin

STREET ADDRESS: 222 E. Weber Avenue

MAILING ADDRESS:

CITY AND ZIP CODE: Stockton, CA 95202

BRANCH NAME: Civil Division

PLAINTIFF: Robert Shelton, Cheyenne Shelton, and Steven Bryan

DEFENDANT: Patrick Medina, The City of Stockton, The City of Stockton Police Department, and

☒ DOES 1 TO 25

COMPLAINT-Personal Injury, Property Damage, Wrongful Death

☐ AMENDED (Number):

Type (check all that apply):

☒ MOTOR VEHICLE☒ OTHER (specify):

General Negligence

☒ Property Damage☐ Wrongful Death☒ Personal Injury☒ Other Damages (specify):

Loss of Consortium

Jurisdiction (check all that apply):

☐ ACTION IS A LIMITED CIVIL CASE

Amount demanded

☐ does not exceed \$10,000☐ exceeds \$10,000, but does not exceed \$25,000☒ ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)☐ ACTION IS RECLASSIFIED by this amended complaint☐ from limited to unlimited☐ from unlimited to limited

BEING ASSIGNED TO JUDGE
BARBARA A. KNONLUND IN DEPARTMENT 42
FOR ALL PURPOSES, INCLUDING TRIAL

CASE NUMBER:

STK-CV- UAT -2016- 2119

1. Plaintiff (name or names): Robert Shelton, Cheyenne Shelton, and Steven Bryan

alleges causes of action against defendant (name or names): Patrick Medina, The City of Stockton, The City of Stockton Police Department, and Does 1 to 25

2. This pleading, including attachments and exhibits, consists of the following number of pages: 6

3. Each plaintiff named above is a competent adult

a. ☐ except plaintiff (name):(1) ☐ a corporation qualified to do business in California(2) ☐ an unincorporated entity (describe):(3) ☐ a public entity (describe):(4) ☐ a minor ☐ an adult(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed(b) ☐ other (specify):(5) ☐ other (specify):b. ☐ except plaintiff (name):(1) ☐ a corporation qualified to do business in California(2) ☐ an unincorporated entity (describe):(3) ☐ a public entity (describe):(4) ☐ a minor ☐ an adult(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed(b) ☐ other (specify):(5) ☐ other (specify):☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

SHORT TITLE:

Shelton v. Medina, et al.

.SE NUMBER:

4. ☐ Plaintiff (name):

Is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

a. ☒ except defendant (name):

Patrick Medina

- (1) ☐ a business organization, form unknown
 (2) ☐ a corporation
 (3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):(5) ☒ other (specify):

Employee, in the course and scope of employment with the City of Stockton Police Department

b. ☒ except defendant (name):

The City of Stockton

- (1) ☐ a business organization, form unknown
 (2) ☐ a corporation
 (3) ☐ an unincorporated entity (describe):

(4) ☒ a public entity (describe):

City Municipality

(5) ☐ other (specify):c. ☒ except defendant (name):

The City of Stockton Police Department

- (1) ☐ a business organization, form unknown
 (2) ☐ a corporation
 (3) ☐ an unincorporated entity (describe):

(4) ☒ a public entity (describe):

Agency within the City of Stockton

(5) ☐ other (specify):d. ☐ except defendant (name):

- (1) ☐ a business organization, form unknown
 (2) ☐ a corporation
 (3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):(5) ☐ other (specify):☒ Information about additional defendants who are not natural persons is contained in Attachment 5.

6. The true names of defendants sued as Does are unknown to plaintiff.

a. ☒ Doe defendants (specify Doe numbers): 1 to 25 were the agents or employees of other named defendants and acted within the scope of that agency or employment.b. ☒ Doe defendants (specify Doe numbers): 1 to 25 are persons whose capacities are unknown to plaintiff.7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

- a. ☐ at least one defendant now resides in its jurisdictional area.
 b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.
 c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.
 d. ☐ other (specify):

9. ☒ Plaintiff is required to comply with a claims statute, and

- a. ☒ has complied with applicable claims statutes, or
 b. ☐ is excused from complying because (specify):

10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- a. ☒ Motor Vehicle
- b. ☒ General Negligence
- c. ☐ Intentional Tort
- d. ☐ Products Liability
- e. ☐ Premises Liability
- f. ☒ Other (specify):
Loss of consortium

11. Plaintiff has suffered

- a. ☒ wage loss
- b. ☒ loss of use of property
- c. ☒ hospital and medical expenses
- d. ☒ general damage
- e. ☒ property damage
- f. ☒ loss of earning capacity
- g. ☒ other damage (specify):
Emotional distress

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12.
- b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☐ punitive damages

The amount of damages is (in cases for personal injury or wrongful death, you must check (1)):

- (1) ☒ according to proof
- (2) ☐ in the amount of: \$

15. ☒ The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):
All.

Date: November 30, 2016

Larry S. Buckley, Esq.
(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

SHORT TITLE:

Shelton v. Medina, et al.

CASE NUMBER:

First _____
(number)

CAUSE OF ACTION- Motor Vehicle

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint
(Use a separate cause of action form for each cause of action.)

Plaintiff (name): Robert Shelton, Cheyenne Shelton, and Steven Bryan

MV-1. Plaintiff alleges the acts of defendants were negligent; the acts were the legal (proximate) cause of injuries and damages to plaintiff; the acts occurred

on (date): 12/31/2015

at (place): El Dorado Street (at intersection with Park Street) Stockton, San Joaquin County, California. Plaintiffs incorporate all of the allegations of this complaint by this reference as though fully set forth herein. Patrick Medina, in the course and scope of his employment with The City of Stockton Police Department, negligently caused the subject collision in violation of California Vehicle Code sections 21453 and 22350. Pursuant to Government code sections 815.2 and 820, Officer Patrick Medina and the City of Stockton are therefore liable.

MV-2. DEFENDANTS

- a. ☒ The defendants who operated a motor vehicle are (names):
Patrick Medina, The City of Stockton, The City of Stockton Police Department, and
☒ Does 1 _____ to 25 _____
- b. ☒ The defendants who employed the persons who operated a motor vehicle in the course of their employment are (names): Patrick Medina, The City of Stockton, The City of Stockton Police Department, and
☒ Does 1 _____ to 25 _____
- c. ☒ The defendants who owned the motor vehicle which was operated with their permission are (names):
Patrick Medina, The City of Stockton, The City of Stockton Police Department, and
☒ Does 1 _____ to 25 _____
- d. ☒ The defendants who entrusted the motor vehicle are (names):
Patrick Medina, The City of Stockton, The City of Stockton Police Department, and
☒ Does 1 _____ to 25 _____
- e. ☒ The defendants who were the agents and employees of the other defendants and acted within the scope of the agency were (names):
Patrick Medina, The City of Stockton, The City of Stockton Police Department, and
☒ Does 1 _____ to 25 _____
- f. ☐ The defendants who are liable to plaintiffs for other reasons and the reasons for the liability are
☐ listed in Attachment MV-2f ☐ as follows:

☐ Does _____ to _____

Page 4 _____

Page 1 of 1

SHORT TITLE:

SE NUMBER:

Shelton v. Medina, et al.

Second**CAUSE OF ACTION- General Negligence**Page 5

(number)

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint*(Use a separate cause of action form for each cause of action.)*

GN-1. Plaintiff (name): Robert Shelton, Cheyenne Shelton, and Steven Bryan

alleges that defendant (name): Patrick Medina, The City of Stockton, The
City of Stockton Police Department, and☒ Does 1 to 25

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff

on (date): 12/31/2015

at (place): El Dorado St. (intersection with Park St.) Stockton, California

(description of reasons for liability) :

Plaintiffs incorporate all of the allegations of this complaint by this reference as though fully set forth herein.

Defendants, and each of them, negligently operated and/or controlled their vehicles as to directly and proximately cause said collision. Specifically, Patrick Medina, in the course and scope of his employment with the City of Stockton Police Department, negligently caused the subject collision in violation of California Vehicle Code sections 21453 and 22350. Pursuant to Government code sections 815.2 and 820, Officer Patrick Medina and the City of Stockton are therefore liable.

As a direct and proximate result of the negligence of Defendants, and each of them, Plaintiffs has sustained injuries and damages in an amount according to proof at trial.

SHORT TITLE:

Shelton v. Medina, et al.

CASE NUMBER:

ATTACHMENT (Number): Third

(This Attachment may be used with any Judicial Council form.)

CAUSE OF ACTION-LOSS OF CONSORTIUM

Plaintiffs incorporate all of the allegations of this complaint by this reference as though fully set forth herein.

At all times mentioned herein, Plaintiff Cheyenne Shelton was and is the wife of Plaintiff Robert Shelton. As a direct and proximate result of the negligence of Defendants, and each of them, Plaintiff Robert Shelton has suffered and continues to suffer injuries and damages in an amount according to proof. As a further direct and proximate result of the negligence of Defendants in violation of California Vehicle Code sections 21453 and 22350. Pursuant to Government Code sections 815.2 and 820. Plaintiff Cheyenne Shelton has suffered and continues to suffer the loss of love, companionship, comfort, care, assistance, protection, affection, society, moral support, and intimacy due to the past, present and future injuries and damages of Plaintiff Robert Shelton.

Plaintiff Cheyenne Shelton has therefore sustained and will sustain damages for loss of consortium in an amount according to proof.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 6 of 6
(Add pages as required)

FRANK M. PACHECO, ESQ., State Bar Number 163467
LAW OFFICES OF FRANK PACHECO
1222 Monaco Court, Suite 26
Stockton, CA 95207
Telephone: (209) 937-0644
Fax:

Attorney for Hasan Shahriar, and E. H., a minor.

**IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA**

HASAN SHAHRIAR, and E. H., a Minor,
by her Guardian ad Litem HASAN
SHAHRIAR,

Plaintiffs,

vs.

ROBERT LOCKE MOLTHEN, AARON
ROBERT BURNELL, and HUMBERTO
JAVIER CENTENO,

Defendants.

Case No.

**COMPLAINT FOR DAMAGES
[42 U.S.C. SECTION 1983]**

DEMAND FOR JURY TRIAL

Plaintiffs allege:

GENERAL ALLEGATIONS

1. This is an action brought under 42 U.S.C. § 1983 to recover damages against Defendants for violation of Plaintiffs' right to be free from unreasonable search & seizure, under the Fourth and Fourteenth Amendments to the United States Constitution.

2. The jurisdiction of this Court is predicated on 28 U.S.C. §§ 1331 and 1343.

3. Plaintiff HASAN SHAHRIAR, and Plaintiff E. H., a minor, by her Guardian ad Litem, HASAN SHAHRIAR, are, and at all times mentioned in this complaint were, a legal permanent resident of the United States, and a citizen of the United States, respectively, and residents of San Joaquin County, California.

1 4. Plaintiffs are informed and believe and thereon allege that the Defendants ROBERT
2 LOCKE MOLTHEN, AARON ROBERT BURNELL, and HUMBERTO JAVIER CENTENO,
3 are, and at all times mentioned in this complaint were, residents of San Joaquin County,
4 California. Venue is therefore proper under 28 U.S.C. § 1391(b).

5 5. A substantial part of the events giving rise to this action occurred in San Joaquin,
6 California. Venue is therefore proper under 28 U.S.C. § 1391(b).

7 6. Defendants ROBERT LOCKE MOLTHEN, ARRON ROBERT BURNELL, and
8 HUMBERTO JAVIER CENTENO were, and at all times mentioned in this complaint, agents of
9 the City of Stockton Police Department, employed as law enforcement officers.

10 7. Defendants ROBERT LOCKE MOLTHEN, ARRON ROBERT BURNELL, and
11 HUMBERTO JAVIER CENTENO were, at all times mentioned in this complaint, acting within
12 the course and scope of their employment with the City of Stockton Police Department.

13 8. Defendants ROBERT LOCKE MOLTHEN, ARRON ROBERT BURNELL, and
14 HUMBERTO JAVIER CENTENO were, at all times mentioned in this complaint, acting under
15 color of state law.

16 9. Defendant ROBERT LOCKE MOLTHEN (hereinafter Defendant MOLTHEN),
17 ARRON ROBERT BURNELL (hereinafter Defendant BURNELL), and HUMBERTO JAVIER
18 CENTENO (hereinafter Defendant CENTENO) are sued in their individual capacities.

19 ///

20 **FIRST CAUSE OF ACTION**
21 **[Illegal Seizure, Illegal Search]**

22 By Plaintiff HASAN SHAHRIAR (hereinafter Plaintiff SHAHRIAR), and E. H., a Minor,
23 by her Guardian ad Litem HASAN SHAHRIAR (hereinafter Plaintiff E. H.),

24 Plaintiffs allege:

25 10. Plaintiffs refer to and herein incorporate Paragraphs 1 through 9 of the General
26 Allegations of this complaint as though fully set forth herein.

27 11. This is an action under 42 United States Code § 1983 to recover damages against the
28

1 Defendants for violation of Plaintiff's right to be free from illegal search and seizure guaranteed
2 by the Fourth and Fourteenth Amendments to the United States Constitution.

3 12. Plaintiff SHAHRIAR alleges that on December 9, 2014, Plaintiff discovered that his
4 then wife Nawshaba Mustafi (herein after Mustafi) was having an affair with another man.
5 Plaintiff went to his home located in Stockton, California, and confronted his wife.

6 13. Mustafi had a known history and diagnosis of depression. Plaintiff is informed and
7 believes, and thereon alleges, that during the confrontation on December 9, 2014, concerning
8 infidelity, Mustafi attempted to commit suicide by swallowing all her prescription medications,
9 used for her on-going depression, as well as calling 911. During this confrontation regarding
10 Mustafi's infidelity Plaintiff SHAHRIAR did not strike, hit, punch, kick or assault Mustafi.

11 14. On December 9, 2014, Defendants MOLTHEN, BURNELL and CENTENO arrived
12 at Plaintiffs' residence, with Defendant MOLTHEN arriving before Defendants BURNELL and
13 CENTENO. Defendant MOLTHEN then told Defendant CENTENO that this was domestic
14 violence.

15 15. At the time of the arrival of Defendants BURNELL and CENTENO on December 9,
16 2014, Plaintiff SHAHRIAR was holding his daughter, Plaintiff E. H., while standing in his
17 garage with Mustafi in the garage on her knees crying.

18 16. On that date, Defendant CENTENO then took Plaintiff E. H. from Plaintiff
19 SHAHRIAR and handed her over to Defendant BURNELL. Then Defendant CENTENO hand
20 cuffed Plaintiff SHAHRIAR and confined him in a patrol vehicle. Plaintiff SHAHRIAR was
21 arrested for an alleged act of felony domestic violence.

22 17. Defendant CENTENO then found Mustafi in the living room of the residence having
23 a seizure. An ambulance was called and Mustafi was transported to San Joaquin General
24 Hospital. Defendant CENTENO then called the San Joaquin County Child Protective Services.
25 Child Protective Services social worker Ms. Blankenship then removed Plaintiff E. H. from her
26 home and placed her in foster care.

27 18. Prior to Plaintiff SHAHRIAR'S arrest on December 9, 2014, Defendants
28

1 MOLTHEN, BURNELL, and CENTENO did not discover any signs of physical trauma on
2 Mustafi. During Mustafi' transport by ambulance she was bagged with a bag-valve mask with
3 oropharyngeal airway inserted in her mouth by the EMS personnel. Upon arrival at the San
4 Joaquin County General Hospital Mustafi was intubated. Thereafter Defendant CENTENO
5 arrived at the San Joaquin County General Hospital to try to speak to Mustafi and at that time,
6 after medical intervention, Defendant CENTENO discovered a minor abrasion on Mustafi's
7 lower lip.

8 19. On or about December 12, 2014, the Plaintiff's criminal counsel appeared in San
9 Joaquin County Superior court at which time the court indicated that the San Joaquin District
10 Attorney's Office failed to file any charges against Plaintiff SHAHRIAR in the matter for which
11 the arrest was made.

12 20. On April 14, 2016, the San Joaquin County Superior Court (criminal division)
13 pursuant to California Penal Code § 851.8, declared Plaintiff SHAHRIAR, "factually innocent"
14 of the charges for which his arrest was made and issued an order to seal and destroy the arrest
15 record.

16 21. As a direct and proximate result of the conduct of the Defendants MOLTHEN,
17 BURNELL, and CENTENO, Plaintiff E H, 3 years of age at the time of the incident, suffered
18 emotional distress as she was removed from her residence and her parent, that is Plaintiff
19 SHAHRIAR'S care and placed in foster home for a period of five (5) weeks.

20 22. As a further direct and proximate result of the conduct of Defendants, and each of
21 them, including Defendants MOLTHEN, BURNELL, and CENTENO, Plaintiff SHAHRIAR was
22 incarcerated by Defendants at the Police Department, fingerprinted & photographed, then
23 transported to the San Joaquin County jail in a van with other criminal suspects and incarcerated
24 in the San Joaquin County Jail for a total time of approximately eleven (11) hours before Plaintiff
25 SHAHRIAR was able to obtain bail.

26 23. As a further direct and proximate result of the conduct of Defendants, and each of
27 them, Plaintiff SHAHRIAR arranged for a bail bond premium of Five Thousand dollars
28

1 (\$5,000.00), to enable his release from jail at about 8 p.m. on December 9, 2014..

2 24. As a further direct and proximate result of the conduct of Defendants, and each of
3 them. Plaintiff SHAHRIAR incurred attorney's fees for criminal representation in the amount of
4 Three Thousand dollars (\$3,000.00). That attorney fee amount was for legal representation at the
5 arraignment and then for a motion to seal and destroy the arrest record pursuant to California
6 Penal Code § 851.8.

7 25. As a direct and proximate result of Defendants' actions, described in this complaint,
8 Plaintiffs have suffered injury, loss, and damage, including loss of liberty, humiliation, emotional
9 distress, pain, and suffering.

10 26. In acting as alleged in this Complaint Defendants MOLTHEN, BURNELL, and
11 CENTENO, and each of them, violated Plaintiffs' right to be free from an unreasonable search
12 and unlawful seizure of Plaintiff SHAHRIAR and further an unlawful seizure of Plaintiff E. H. in
13 violation of the Fourth and Fourteenth Amendments to the United States Constitution.

14 27. In acting as is alleged in this complaint, Defendants acted knowingly, willfully, and
15 maliciously, and with reckless and callous disregard for Plaintiffs' federally protected rights.

16 ///

17 ///

18 ///

19 ///

20 ///

21 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

22 For Plaintiff HASAN SHAHRIAR and Plaintiff E. H. on the FIRST CAUSE OF
23 ACTION as follows:

- 24 1. For compensatory and emotional damages, in an amount of \$300,000.00;
25 2. For special damages, in an amount of \$8,000.00;
26 3. For punitive damages, in an amount of \$500,000.00;
27 4. For reasonable attorney's fees, pursuant to 42 U.S.C. § 1988;
28

1 5. For costs of suit incurred in this action; and

2 6. For such other and further relief as the Court deems proper.

3 Dated: November 30, 2016

Respectfully Submitted,

4
5 LAW OFFICES OF FRANK PACHECO

6 /s/ Frank M. Pacheco

7 By _____
FRANK M. PACHECO, ESQ.
Attorney for Plaintiffs HASAN SHAHRIAR,
8 and E. H., a Minor, by her Guardian ad Litem
HASAN SHAHRIAR
9

10 ///

11 **DEMAND FOR JURY TRIAL**

12 Plaintiffs HASAN SHAHRIAR, and E. H., a Minor, by her Guardian ad Litem HASAN
13 SHAHRIAR, hereby demand a jury trial.

14 Dated: November 30, 2016

Respectfully Submitted,

15 LAW OFFICES OF FRANK PACHECO

16 By _____ /s/ Frank M. Pacheco

17 FRANK M. PACHECO, ESQ.
Attorney for Plaintiffs HASAN SHAHRIAR,
18 and E. H., a Minor, by her Guardian ad Litem
HASAN SHAHRIAR
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VERIFICATION

We, HASAN SHAHRIAR, and E. H., a Minor, by her Guardian ad Litem HASAN SHAHRIAR, are the Plaintiffs in the above-entitled action. We have read the foregoing complaint and know the contents thereof. The same is true of our own knowledge, except as to those matters which are stated on information and/or belief, and as to those matters, We believe them to be true.

We declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed at Stockton, California.

Dated: December 1, 2016

/s/ Hasan Shahriar
Hasan Shahriar

/s/ Hasan Shahriar
E. H., a Minor, by her
Guardian ad Litem Hasan Shahriar

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Robert Wooten
2478 Van Buskirk St.
Stockton, CA. 95206
(209) 992-8101
In Pro-Per

IN THE SUPERIOR COURT OF CALIFORNIA;
IN AND FOR THE COUNTY OF SAN JOAQUIN

ROBERT WOOTEN
Plaintiff,
vs.
THE CITY OF STOCKTON
Defendant

CASE NO. STK-CV-UCR-12310
VIOLATION OF THE FOURTH
AMENDMENT TO THE U. S.
CONSTITUTION: UNLAWFUL ARREST
AND IMPRISONMENT. USMCA 1983
JURY TRIAL DEMANDED

THIS CASE HAS BEEN ASSIGNED TO JUDGE
BARBARA A. KRONLUND IN DEPARTMENT 42
FOR ALL PURPOSES, INCLUDING TRIAL

FILED
16 DEC -6 PM 12:09
RGSA JUDGE IRONCLERK
BY *[Signature]* DEPUTY

#435/#124737

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- 3 Dawkins v City of Los Angeles, 22 Cal 3d, 126, 129
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- 5 City of Newport Beach v Sasse, (1970), 9 Cal. App. 3d 803, 810
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- 9 Crudup v Schulte, 12 Fed. Appx. 62
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- 15 Mc Clish v Nugent, 483 F. 3d, 123, 1240
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- 17 New York v Harris, 495 U.S. 14, 18; 110 S. Ct. 1640
- 18 New York v Payton, 445 U.S. 590; 100 S. Ct. 1371.
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- 20 People v Brock, (1963), 220 Cal. App. 2d 605, 608
- 21 Silverman v U. S. 365 U. S. 511; 81 S.CT. 679
- 22 Steadgald v U.S. 451 U.S. 204, 212; 101 s.Ct. 1642
- 23 State v Courville, 2002 MT. 330, 313 Mont. 218, 61 P. 3d 749 (2002); AM. Jur. 2d 792
- 24 U. S, v Oaxaca, 233 F. 3D 11544, 57; (9TH Cir).
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- 27
- 28

1 Robert Wooten
2 2478 Van Buskirk St.
3 Stockton, CA. 95206
4 (209) 992-8101
5 In Pro-Per
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IN THE SUPERIOR COURT OF CALIFORNIA;
IN AND FOR THE COUNTY OF SAN JOAQUIN

13 ROBERT WOOTEN

14 Plaintiff,

15 vs.

16 THE CITY OF STOCKTON

17 Defendant

CASE NO.

VIOLATION OF THE FOURTH
AMENDMENT TO THE U. S.
CONSTITUTION: UNLAWFUL ARREST
AND IMPRISONMENT. USMCA 1983

JURY TRIAL DEMANDED

18
19 1. Plaintiff, Robert Wooten, comes before the court alleging violations of the Fourth
20 Amendment to the U, S. Constitution, by the City of Stockton, (hereinafter City), through its Police
21 Department, as a result of the improper and illegal actions of one of its police officers; believed to
22 be Mack Lucas, for unlawful arrest, occasioned by excessive force, resulting in false imprisonment.
23
24 2. It is alleged the arrest was unlawful as the result of the unreasonable actions of one of the
25 City's police officers due to the inefficient training of such officers provided by the City to and
26 through the City's Police Department. The police officer, believed to be Mack Lucas, under the
27 direction of the City, acting in his official capacity as a police officer, without an order, warrant, or
28

1 process of any kind, from any authority, forcibly entered the personal residence of Plaintiff Wooten,
2 against the Plaintiff's will, where the police officer did unreasonably trespass, and with excessive
3 force, detain, arrest, and imprison said Plaintiff; restraining him, against his will, in the San Joaquin
4 County jail for three days; in isolation, and without proper clothing.
5

6 3. It is alleged that Lucas acted with malicious intent to arrest, oppress and injure Plaintiff's
7 good name and reputation. As a result, Plaintiff suffered great mental, emotional, psychological
8 and physical distress and has been damaged in his good name and reputation to his family, friends,
9 community and at his place of employment. Plaintiff is seeking compensatory and remedial
10 damages from the city in the sum of one hundred thousand dollars, and one thousand dollars in
11 punitive damages from Mack Lucas.
12

13 4. It is alleged, the City is responsible for providing its Police Department and subsequently its
14 police officers with the proper training to help such officers understand when, where and how to
15 implement the proper procedures when confronted with unusual circumstances such as those
16 alleged in this particular situation. It is further alleged; Plaintiff, Robert Wooten, was arrested
17 inside his personal residence, for "resisting arrest" prior to ANY inquiry resulting in a
18 determination that a crime had been committed. It is further alleged that until an officer has
19 probable cause to believe that a crime has been committed, which, unless seen personally, or
20 informed by someone, cannot be determined prior to an inquiry, such officer has no authority to
21 invoke his police powers. Lucas stated in his police report he saw no visible bruises or marks on
22 Manning to suggest that she had suffered abuse and that she requested no assistance from the police.
23 These observations occurred AFTER Wooten had been arrested for "false arrest" and taken out of
24 his residence and placed in a police vehicle.
25
26
27

1 5. It is further alleged, to charge and arrest an individual with "resisting arrest" prior to a
2 determination that a crime has been committed is unreasonable and a violation of the Fourth
3 Amendment's prohibition against unreasonable search and seizure clauses and is a direct result of
4 the failure of the City of Stockton, through its Police Department to provide adequate training, and
5 or adequate enforcement of such training, to its police officers.

7 BACKGROUND

8 6. Until about April, 2016, Plaintiff allowed a former girlfriend, Victoria Manning, to live as a
9 "guest" at his residence; free of charge. She paid no expenses; whatsoever. She did not cook, wash,
10 iron, or sew for Plaintiff. She bought her food and Plaintiff bought his. The parties were not
11 sexually intimate. From time to time she would become abusive, cursing Plaintiff and Plaintiff
12 resented this.

14 7. On or about January 3, 2016, the parties became involved in an argument and Manning
15 began cursing Plaintiff who became angry and told her to leave. She refused. Plaintiff called the
16 police and asked for their assistance in helping him remove an unwanted guest from his house. The
17 female dispatcher told Plaintiff he could not make her leave. It is alleged the statement was in error
18 as it was made prior to the dispatcher having any knowledge of the facts involved in the situation.

20 8. At about this time the doorbell rang. Plaintiff took about 5 or 6 steps to the front door and
21 opened it. It was the police. Plaintiff stated that he needed assistance in removing an unwanted
22 female guest from the house.

24 9. At about this time Lucas told Manning to step outside onto the porch. He then told Wooten
25 to sit down, (in the house). Plaintiff told him that he, (Plaintiff), did not want to sit down. Then
26 Lucas said, "I said sit down!"

1 10. Plaintiff asked why he had to sit down. Plaintiff said, "I am not interfering with you. I am
2 not stopping you from doing anything you need to do." Lucas said, "this is a crime scene and I am
3 investigating a crime." Plaintiff said, "you have no evidence that a crime has been committed. I did
4 not hit her and she has no marks or bruises on her."
5

6 11. By this time Lucas had entered Plaintiff's house and Plaintiff began to retreat into the room.
7 Plaintiff told Lucas that he had no authority to be in Plaintiff's house and Plaintiff asked Lucas to
8 leave. Lucas said "sit down or go to jail." Plaintiff repeated that Plaintiff did not see a need to sit
9 down in that Lucas had not made an inquiry into the purpose of the call for help, nor who had made
10 the call; and therefore had no justification to believe that a crime had been committed.
11

12 12. Lucas then said, "put your hands behind your back, you are under arrest." He then took
13 Plaintiff's arm and placed it behind Plaintiff's back and forced Plaintiff to the floor where he
14 handcuffed Plaintiff and took Plaintiff to the police car.
15

16 13. At the police station Plaintiff asked Lucas what crime Plaintiff was being charged with
17 violating. Plaintiff asked Lucas how he could charge Plaintiff with domestic violence when
18 Manning had no marks or bruises on her to indicate that a crime had been committed, and there was
19 no sign of a struggle in the house. Lucas said that Plaintiff was not being charged with domestic
20 violence but only "what happened in the house." When Plaintiff got to the jail he asked what the
21 charges were and Plaintiff was told domestic violence and resisting arrest.
22

23 14. Plaintiff is seventy five years of age. He was barefooted with no shirt, let alone a jacket. He
24 was taken out of his personal residence, without shoes, on the cold ground, in the middle of winter;
25 without a shirt; demonstrating a total disregard for Plaintiff's personal safety and welfare.

26 15. Plaintiff spent three days in the county jail, where he was isolated because of his age. He
27 was cold the entire time that he was there. The jailer claimed that there was not enough clothing to
28

1 go around to keep the Plaintiff warm. When he was released from custody on his own
2 recognizance, Plaintiff was given a pair of old, worn-out shoes left by another inmate who had
3 been discharged earlier so that he need not walk outside on the cold ground. This reflects a total
4 disregard for the safety and welfare of Plaintiff. The District Attorney declined to prosecute.
5

6 7 CONTROLLING PRINCIPLES

8 16. USMC 1983 grants a cause of action for the deprivation of a federal constitutional right by
9 an individual acting under color of authority; *Meyers v Nagel*, 962 F 2d 14 9th Cir. 1992. In terms
10 of an arrest, that right is the Fourth Amendment's guarantee to be free from unreasonable seizure;
11 *Crudup v Schulte*, 12 Fed. Appx. 682.
12

13 17. In *Meyers*, (above), the Ninth Circuit stated that in terms of an arrest the right protected
14 by the Fourth Amendment was the right to be free from unreasonable seizures. The use of
15 "excessive force" to effectuate an arrest by a cop is a violation of the arrestees Fourth Amendment
16 right to be free from an unreasonable seizure. See *White*, 797 F. 2d, 816.
17

18 The Ninth Circuit went on to say it is undisputed that the right to be free from an unreasonable
19 seizure resulting from excessive force was "clearly established" at the time of Meyer's arrest so as
20 to alert Nagel, (the cop), to its constitutional parameters. It is also alleged, that without extenuating
21 circumstances, (which are lacking here), the police may not enter the personal residence of an
22 arrestee without service of process; in other-words, an arrest or search warrant.
23

24 18. Because one of the factors is the extent of the intrusion, it is plain that reasonableness
25 depends on not only when a seizure is made, but also how it is carried out. *Garner v Memphis*
26 *Police Department*, 105 S. Ct. 1694, 99.
27
28

1 19. Implicit in the Fourth Amendment's protection from unreasonable searches (and seizures)

2 is its recognition of individual freedom. The fundamental liberty of the individual includes pro-

3 tection against unannounced police entries. A search (or seizure) would violate the Fourth

4 Amendment if the entry were illegal; whether accomplished by force or by illegal threat or show of

5 force. State and federal police officers have a common obligation to respect this basic

6 constitutional limitation *Kerr v California*

7 20. A police officer who makes an arrest without a warrant and without justification, may be

8 held civilly liable; *Dragna v White*, 45 (1955) Cal 2d 469, 471.

9 The City's liability is coextensive with the liability, if any, of the police officer, *Collins v City and*

10 County of San Francisco, 50 Cal App 3d, 671,674.

11 21. The employer is responsible for the acts of its employees; *Kaufman v Brown*, (1949), 93

12 Cal. 2d 508, 515. The employing entity may be liable in compensatory damages for false imprison-

13 ment of a person by one of its police officers; *Dawkins v City of Los Angeles*, 22 Cal 3d, 126, 129.

14 22. False imprisonment affords a civil right of action for recovery of damages; *Gogue v*

15 McDonald, (1950), 35 Cal 2d 482, 484.

16 23. False imprisonment is the unlawful violation of the personal liberty of another. California

17 Penal Code, Section 236. *City of Newport Beach v Sasse*, (1970), 9 Cal. App. 3d, 803, 810.

18 24. False imprisonment may occur with the unauthorized taking of a person into custody by a

19 Police officer; *People v Brock*, (1963), 220 Cal App2d, 605, 608.

1 ARGUMENT

2 25. The Supreme Court proceeded to define the scope of the Fourth Amendment's protection of
3 the home in very explicit terms: "The Fourth Amendment protects the individual's privacy in a
4 variety of settings. In none is the zone of privacy more clearly defined than when bounded by the
5 unambiguous physical dimensions of an individual's home- a zone that finds its roots in clear and
6 specific constitutional terms: "The right of the people to be secure in their ... houses ... shall not
7 be violated.' That language unequivocally establishes the proposition that "(at) the very core (of the
8 Fourth Amendment) stands the right of a man to retreat into his own home and there be free from
9 unreasonable governmental intrusion." *Silverman v United States*, 365 U. S. 505, 511, 81 S. Ct. 679.
10
11 "In terms that apply equally to seizures of property and to seizures of persons, the Fourth
12 Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that
13 threshold may not reasonably be crossed without a warrant. Warrantless entry into the home is
14 therefore unreasonable, subject only to a few "jealously and carefully drawn exception; (none of
15 which apply here)." *McClish v Nugent*, 483 F3d, 1231, 1240.
16
17

18 26. In *New York v Harris*, 495 U. S. 14, 18; 110 S. Ct. 1640, it was said, "Payton, (445 U. S.
19 @ 590, 100 S. Ct. 1371), nevertheless drew a line at the entrance to the home. This special
20 solicitude was necessary because physical entry of the home is the chief evil against which the
21 wording of the Fourth Amendment is directed; *Steadgald v United State*, 451 U. S. 204, 212, 101 s.
22 Ct. 1642.
23

24 27. In *U. S. v Oaxaca*, 233 F. 3d 11544,57, the Ninth Circuit said, "The Supreme Court and
25 our court have made crystal clear that, in the absence of exigent circumstances, the police must
26 obtain an arrest warrant before entering a person's home to arrest him.
27

1 28. See also *La Londe v County of Riverside*, 204 F 3d 947, 955 (9th Cir. 2000) holding that
2 the Fourth Amendment was violated because “the arrest took place only after the officer had
3 crossed the threshold of the door and entered La Londe’s apartment.
4

5 29. It has been well established, since at least 1980, in *Payton*, (above), and its progeny, that
6 police may not violate the sanctity of the home for a “simple felony”; it goes without mention that
7 police are prohibited from entering the home, (as in this case), for an alleged misdemeanor, that
8 occurred out of his presence, and prior to an inquiry as to the alleged facts and circumstances
9 involving the request for assistance in this particular incident.
10

11 30. Courts have held that an unlawful arrest may be resisted with reasonable force. “An
12 individual is authorized to use force to resist in some jurisdictions when the officers force to affect
13 the arrest is excessive. *Com. v Grandison*, 433 Mass. 135, 741 N. E. 2d 25 (2001); *State v Courville*
14 2002 MT 330, 313 Mont. 218, 61 P. 3d 749 (2002); *Am. Jur.* 2d 792.
15

16 31. Surely it cannot be maintained that a citizen, (as here) that has called for police assistance
17 in removing an undesirable guest from his home, and is merely asserting his constitutional right
18 regarding the sanctity of his home; by stating that the police had no authority to be in the
19 individuals personal residence; the sanctity which is actively and aggressively being violated by
20 police, can be said to be resisting arrest, so that it is reasonable for “Wooten to be taken to the
21 ground to be placed in handcuffs;” (police report @ 1.).
22

23 32. The Supreme Court, in *Payton*, *supra*, has determined such an entry is unreasonable,
24 therefore it must be determined in this case to be an unlawful act and subject to at least verbal
25 resistance, as occurred here. The unlawful use of force in “taking Wooten to the ground,” (police
26 report @ 1), was, in and of itself, an additional and further instance of unreasonable conduct, where
27

1 direction from the City should have been given against such unconstitutional conduct decades ago.

2 The Payton ruling has been in place for over thirty five years which is ample time for the City to
3 have become aware of its guidelines along with its restrictions, and to have implemented proper
4 procedures to effectively control the actions of its officers in the field; which Lucas apparently did
5 not have, or did not feel necessary to follow.

7 33. The action of Lucas was not that of a renegade cop operating outside of the known and
8 accepted perimeters of effective police procedures of the Stockton Police Department. While at the
9 police station, Plaintiff observed Lucas talking to a co-worker. After the conversation the co-
10 worker felt it necessary to inform Plaintiff that at times it becomes necessary to separate the parties.
11 From his statement it was believed the co-worker was implying Lucas had made the proper
12 decision; even though separation was not the issue. Sitting down, in juvenile obedience to the White
13 man, was the issue. Plaintiff refused to sit down, in his home, where there were no extenuating
14 circumstances; no reason to fear that Plaintiff would flee, destroy evidence or cause injury to person
15 or property, which would require him to sit. Refusing to sit down was the issue for which Plaintiff
16 was arrested; inside his personal residence.

19 34. An old, overweight, out of shape, policeman then descended the stairs and Lucas appeared
20 to engage him in conversation. The old cop nodded his head in and up and down manner which was
21 believed to be an indication of approval of Lucas's action.

23 35. The problem appears to be systemic within the Stockton Police Department. Officers
24 appear not to know the law or are indifferent to its proper enforcement. In either case, this indicates
25 a lack of understanding of the constraints of the law, and or proper training /enforcement of such
26 investigating procedures by the police department. In other-words there appears to be a lack of
27 efficient leadership or enforcement in the department.

1 36. This demonstrates the need of an independent, outside police review board. An internal
2 review board is akin to putting the wolf in charge of the hen house. It is necessary that an
3 independent board review allegations made against the police. It is an impossibility for White men,
4 friends and co-workers of the White officers under investigation, to render an objective decision
5 against their co-worker when juxtaposed against allegations of Blacks whom they seem to be
6 innately alienated against.

8 37. At the same time it is the responsibility of each and every police officer to take it upon
9 himself to know the perimeters of the law that he is attempting to enforce. One cannot enforce that
10 that he knows not of. One must know when he is permitted, when he must, and when he is
11 prohibited, (as here), from acting in a particular situation. It is inconceivable that a police officer
12 today, in light of the publicly known hostility that exists between police departments and Black
13 Communities, Nation wide, that an officer would not, should not, be absolutely certain that any
14 action the cop is considering taking, is constitutionally proper.

16 38. It is alleged that Lucas knew, or should have known, that his action in entering the house,
17 prior to any inquiry into the nature of the call, was a violation of the law. His actions were
18 malicious, and vindictive and had no relationship to effective law enforcement, or the facts and or
19 circumstance which lead to the call for assistance.

21 39. Lucas was determined to make Plaintiff sit or take him to jail. To hell with any alleged facts
22 and or circumstances in regard to the call which he was supposed to be answering. The direct
23 challenge to the command "sit" took precedence over everything. Even prior to any attempt to
24 ascertain the necessity for the call, in an attempt to establish probable cause, Lucas took it upon
25 himself to assume that this was a typical case of domestic violence; and he acted accordingly,
26 although falsely, under that perception.

1 40. The physical position of Plaintiff's body, whether standing or sitting, had no relationship to
2 any inquiry believed to be necessary. The chair plaintiff was directed to sit in was not visible from
3 the position of Lucas, who was outside, on the porch, so that Lucas could allege fear for his
4
5 personal safety. If Wooten had stepped away from the entryway of the residence, Lucas would have
6 had no idea whether Wooten stood or sat.

7 41. Lucas' command to sit, under the circumstances, was unnecessary, unreasonable, and
8 intelligible in regards to the situation at hand. What he was commanding was juvenile obedience to
9
10 a White man's improper instruction that was properly, intelligently, peacefully and lawfully
11 rejected by Wooten. That was the crux of the matter. Lucas' White Authority had been rejected.

12 42. This appears to the writer to be contrary to what should be standard police procedure: the
13 necessity to determine the purpose for the call. Lucas never attempted to inquire why police
14 assistance had been requested. He had no idea of the nature of the call for assistance; which should
15 have been his first objective.
16

17 43. It is also imperative that the City, through its police department would enforce the law by
18 penalizing officers for violations of the law. It is believed that such penalties are not in place against
19 officers of the Stockton police department; or they are not effective.

20 44. The old adage that a man's house is his castle, demonstrates the well-known public
21 sentiment regarding the sanctity of the home. This sanctity of the home has been repeatedly
22 enforced by the Supreme Court against violation by the police. The sentiment goes back to the
23 English Common Law. "The right of the people to be secure in their persons, houses, papers, etc.
24 against unreasonable searches and seizures, shall not be violated ... but upon probable cause.
25
26
27
28

1 45. The Rule has a history that exceeds the existence of the Nation. It is unreasonable for a law
2 enforcement officer to allege that he is unaware of the limitations of his authority and/or that he has
3 unbridled authority to violate well known established constitutional provisions.
4

5 46. Ignorance of the law has never been an acceptable defense of the law for the private citizen,
6 nor should it be an acceptable defense for an individual, such as Lucas, whose primary
7 responsibility is to uphold and enforce the law.

8 47. Therefore, it must be determined that an ulterior motive animated his actions. That motive
9 lay outside of the perimeters of effective law enforcement and must be determined to be sinister and
10 against public sentiment. Whatever the motivation, it has no place in effective law enforcement and
11 must be condemned in the most severe terms imaginable.
12

13 48. It was insulting, degrading, and dehumanizing for Wooten to be thrown to the ground in his
14 personal residence; without probable cause of any kind; simply by attempting to assert a well-
15 known constitutional principal.
16

17 49 . The City must be forced to realize that it must exercise effective control over its police
18 department and that it will be financially responsible for the transgressions of its officers. Financial
19 compensation to those injured is believed to be the most effective manner to effect change by the
20 City. No type of apology is sufficient to remedy the situation.
21

22 50. Because it is believed that Lucas was aware of the constitutional restraints placed on his
23 actions by the Supreme Court, it is alleged that punitive penalties should be assessed against both
24 the City, for not properly controlling its officers; and against Lucas himself, for allowing his
25 personal emotions to control his official actions.
26

1 51. Because the City has had ample time to implement procedures to effectively control the
2 actions of its officers in the field, and has failed to do so, remedial damages are also believed to be
3 appropriate under the circumstances. Remedial damages should compel a review of existing
4 on-hand/in-house information that could be compared to and contrasted against current protocol and
5 realigned, if necessary, with effective enforcement procedures designed with futuristic guidelines
6 controlling the interactions of the police with the community.
7

8
9 PRAYER

10 52. Therefore, it is the Prayer of this complaint that the City of Stockton, California be ordered
11 to pay to Plaintiff Robert Wooten the sum of \$100,000 dollars in punitive and remedial damages.
12 Ad that it is also ordered that the Stockton, police officer named in the complaint be ordered to pay
13 \$1,000 dollars in punitive damages.
14

15 VERIFICATION

16 I, Robert Wooten, having been personally humiliated and falsely imprisoned by the
17 unconstitutional actions of an officer of the City of Stockton, California; and having personally
18 prepared this Complaint, do know the contents thereof, and do declare the allegations to be true
19 except for those things alleged on information and belief, and as to those things, I believe them to
20 be true. I Declare, under penalty of perjury, under the laws of the State of California, the above to
21 be true and correct. Prepared at Stockton, California this 6, day of DECEMBER, 2016.
22

23
24 
25 Robert Wooten
26
27
28

TELLING YOUR STORY

COMPLAINT AND DEMAND FOR JURY TRIAL

I.

INTRODUCTION

1. Under California law, city police departments and their officers are liable when they utilize excessive force in performing their duties and for unjustly depriving citizens of their civil rights—including the right to life and liberty. Even officers' tactical conduct and decisions preceding the use of deadly force are relevant considerations in determining whether the use of force was unreasonable.

2. On March 7, 2016, between approximately 9:00 p.m. and 10:00 p.m., the City of Stockton Police Department caused the death of beloved son and brother Abelino Cordova-Cuevas ("Abelino"). Stockton officers used excessive force on Abelino during a traffic stop, including the use of a chokehold, Tasers, and other physical force, which resulted in the tragic death of Abelino.

3. The use of excessive force by police departments across the United States is now commonly on the news. Police have gone unchecked in their use of deadly force against unarmed persons. Abelino's tragedy in Stockton, California is another example of unrestrained police use of force in this country. When police can use deadly force easily and without repercussion, the results are inevitable—people will die.

4. Abelino left behind his beloved parents, Salvador and Maria, and brothers and sisters.

II.

THE PARTIES

A. Plaintiffs

5. At all relevant times, Salvador Cordova Pimentel was a resident of Mexico. Salvador Cordova Pimentel is the surviving father of decedent Abelino Cordova-Cuevas. Salvador Cordova Pimentel is acting both individually and as the successor-in-interest to the estate of Abelino Cordova-Cuevas. An affidavit as required by California Code of Civil Procedure Section 377.32 will be filed in this action. During

1 the altercation with Stockton Police, Abelino Cordova-Cuevas briefly survived the
2 wounds inflicted by the City of Stockton through the use of a Taser, chokehold and
3 other excessive actions, suffering both damage to his clothing and personal property
4 due to their excessive force, as well as terrible pain, emotional distress, fear, anxiety,
5 stress, and worry, before eventually expiring due to the acts of the City of Stockton.
6 Salvador Cordova Pimentel therefore proceeds both on an individual basis and as
7 successor-in-interest to the claims of Abelino Cordova-Cuevas.

8 6. At all relevant times Maria Cuevas Dominguez was a resident of Mexico.
9 Maria Cuevas Dominguez is the surviving mother of decedent Abelino Cordova-
10 Cuevas.

11 7. Plaintiffs Salvador Cordova Pimentel and Maria Cuevas Dominguez are
12 the sole surviving heirs of Abelino Cordova-Cuevas and are the only individuals who
13 have standing to bring a wrongful death action for the death of Abelino under
14 California Code of Civil Procedure §377.60. As a result of the actions described herein,
15 Salvador and Maria lost the familial association and relationship with their son, and
16 bring claims both in a survivorship capacity and for the loss of familial association and
17 wrongful death.

18
19 **B. Defendants**

20 8. Defendants Sergeant Matthew Garlick and Officer Lucas Woodward, at all
21 relevant times were employed as law enforcement officers by Defendant City of
22 Stockton, and were acting within the course and scope of their employment. These
23 defendants are being sued in their individual capacity. Based upon information and
24 belief, these two officers caused the death of Abelino. It is unknown at this time the
25 identity of the other officers who responded to the scene and might have contributed to
26 the death of Abelino.

27 9. At all relevant times, Defendant City of Stockton, is, and was, a
28 governmental entity. The appropriate governmental claims for each plaintiff have been

1 filed with the City of Stockton. The appropriate Governmental Claims were timely filed
2 with the City of Stockton on August 25, 2016, pursuant to California Government Code
3 § 910. (A copy of the § 910 Claim is attached as Exhibit A.) The City received the § 910
4 Claim on August 25, 2016. (Exhibit B.) The City of Stockton failed to act on the claim
5 and on October 25, 2016, gave written notice that the claim was rejected by operation of
6 law on October 10, 2016. (Exhibit C). Thus, the rejection of the claim gives rise to the
7 right to bring this action. (See California Government Code §912.4(c).)

8 10. The true names and capacities, whether individual, corporate, associate or
9 otherwise, of defendants Does 1-100, inclusive, and each of them, are unknown to
10 plaintiffs, who thereby sue these defendants by such fictitious names, and will ask leave
11 of this court to amend this complaint when the same shall have been ascertained.
12 Plaintiffs are informed and believe and upon that basis allege that each defendant
13 named herein as a Doe is responsible in some manner for the events and happenings
14 referred to herein which proximately caused injury to plaintiffs as hereinafter alleged.

15 11. Plaintiffs are informed and believe and on that basis allege that at all times
16 mentioned herein the defendants, and each of them, were the agents, joint venturers,
17 servants, employees, assistants, and consultants of each other, and as such were acting
18 within the course, scope, and authority of said agency, joint venture, and employment,
19 and that each and every defendant, when acting as a principal, was negligent and
20 reckless in the selection, hiring, entrustment, and supervision of each and every other
21 defendant as an agent, servant, employee, assistant, or consultant.

22 23 III.

24 FACTUAL ALLEGATIONS

25 A. The death of Abelino Cordova-Cuevas

26 12. On March 7, 2016, between approximately 9:00 p.m. and 10:00 p.m., the
27 City of Stockton Police Department caused the death of beloved son and brother
28 Abelino Cordova-Cuevas. Stockton officers used excessive force on Abelino during a

1 traffic stop, including the use of a chokehold, Tasers, and other physical force, which
2 resulted in the tragic death of Abelino.

3 13. On March 7, 2016, Abelino was driving near El Dorado and Clay Streets in
4 Stockton when he was pulled over by Stockton police officers, primarily Sergeant
5 Matthew Garlick and/or Officer Lucas Woodward. The officers claimed the stop was
6 for "erratic driving." Witnesses saw Abelino standing on the sidewalk with his hands
7 up and a police officer (either Sergeant Garlick or Officer Woodward) standing in the
8 street shining a flashlight toward him. Abelino repeatedly told the officer "I have no
9 weapons." Abelino started to back up westbound on the sidewalk, keeping his hands
10 in the air, lifting up his shirt, and again telling the officer he had no weapons.

11 14. At roughly the same time, another Stockton police officer (the other of
12 Sergeant Garlick or Officer Woodward) arrived on motorcycle and parked across the
13 street from where Abelino was standing. Both officers heard Abelino's declaration that
14 he had no weapons, saw him lift his shirt, and saw him keep his hands raised.
15 Witnesses heard this officer trigger his Taser, with a very distinctive crackling noise.
16 Abelino was startled and scared, and began to run around the corner, with another
17 police SUV pulling up near where the motorcycle had stopped. The identity of the
18 police officer driving this SUV is unknown to Plaintiffs at this time. The officer in the
19 SUV followed Abelino and the other officers. The officers, including Garlick and
20 Woodward, quickly cornered Abelino at a nearby business. Abelino was unarmed,
21 frightened, and nonviolent toward the officers. But that didn't matter.

22 15. Surveillance footage from that nearby business shows Abelino walking
23 backwards with his hands up before being forcibly brought to the ground by Stockton
24 police officers. Witnesses heard screaming coming from the location where Abelino
25 had gone, and did not hear any officers yelling or saying anything. Witnesses
26 described additional police vehicles and motorcycles arriving to the scene around this
27 time.

28

18. The unreasonable use of deadly force by Stockton police officers was the cause of Abelino's death. Police officers can only use reasonable force under the circumstances. Stockton police officers used *excessive* force against an unarmed, non-violent person, actively depriving a family of its son and brother as a result of Abelino's death.

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS, SERGEANT MATTHEW GARLICK AND OFFICER LUCAS WOODWARD, AND DOES 1-50 FOR VIOLATIONS OF CIVIL RIGHTS PURSUANT TO 42 U.S.C. SECTION 1983, PLAINTIFFS SALVADOR CORDOVA PIMENTEL, INDIVIDUALLY AND AS A

1 SUCCESSOR-IN-INTEREST TO DECEDENT ABELINO CORDOVA-CUEVAS, AND
2 MARIA CUEVAS DOMINGUEZ, ALLEGE:

3 19. Plaintiffs refer to each and every one of the above paragraphs, and
4 incorporate those paragraphs as though set forth in full in this cause of action.

5 20. Defendants, while acting under the color of state law, deprived Abelino of
6 his rights, privileges, and immunities secured by the Constitution and the laws of the
7 United States including the Fourteenth and Fourth Amendments by subjecting him to
8 unreasonable and excessive force. Surveillance video shows Abelino passively lying on
9 the ground while Stockton officers are using a chokehold or carotid restraint, and other
10 unnecessary force.

11 21. Abelino's right to life and liberty and to be free from unreasonable
12 searches and seizures were violated by the officers. The excessive force used by the
13 police officers to subdue a non-violent, unarmed man created an unreasonable risk of
14 causing his death or serious physical injury. The officers intended to terminate
15 Abelino's movement—Sergeant Garlick and Officer Woodward intentionally used
16 Tasers on Abelino, forcefully brought him to the ground, used a chokehold, and used
17 physical force, ultimately resulting in his death.

18 22. At all material times, the use of force, including the use of Tasers,
19 chokehold, and other physical force, was excessive and unnecessary and not justified or
20 lawful under the circumstances. Abelino was unarmed and non-violent. The Stockton
21 police prematurely, intentionally, and with reckless disregard for the well-being of
22 Abelino engaged in violent force on Abelino, divorced from any legitimate law
23 enforcement objective. The actions at issue were official conduct undertaken in a
24 malicious, intentional, or recklessly or callously indifferent manner to Abelino's
25 protected Constitutional rights and liberties.

26 23. Additionally, defendants' failure to follow Stockton Police Department
27 policy, which lead up to unreasonable use of deadly force, also created an unreasonable
28 risk of harm to Abelino, and caused an escalation of events leading to his death. Police

1 unlawfully used deadly force on a nonviolent, unarmed person during a routine traffic
2 stop.

3 24. At all material times, the actions and omissions of each defendant were
4 intentional, wanton and/or willful, conscience shocking, reckless, malicious,
5 deliberately indifferent to Abelino's rights, unreasonable, and committed with reckless
6 disregard of Abelino's constitutional rights. The actions of the defendants— using
7 Tasers on Abelino, forcefully bringing him to the ground, using a chokehold and other
8 physical force—constitute a malicious and sadistic intent to harm Abelino, divorced
9 from the legitimate purposes of law enforcement reacting and subduing a person. By
10 using deadly force on Abelino—an unarmed, non-violent, non-felonious individual—
11 the officers intended to injure or kill him.

12 25. As a direct and proximate result of each Defendant's acts as set forth
13 above, Salvador Cordova Pimentel and Maria Cuevas Dominguez have suffered the
14 loss of their son and his love, companionship, comfort, care, assistance, protection,
15 affection, society, and moral support.

16 26. As a further proximate result of the aforementioned and unconstitutional
17 conduct of defendants, Plaintiff Salvador Cordova Pimentel as successor-in-interest to
18 Decedent Abelino Cordova-Cuevas, brings a claim for the pre-death economic damages
19 (such as damage to Abelino's clothing, medical bills, and personal property) and the
20 pain and suffering inflicted on Abelino Cordova-Cuevas as his death was caused by the
21 violation of federal law. (See *Chaudhry v. City of Los Angeles* (9th Cir. 2014) 751 F.3d 1096,
22 1105.)

23 27. As a further proximate result of the aforementioned unconstitutional
24 conduct of Defendants, Plaintiffs were compelled to retain legal counsel and are entitled
25 to reasonable attorney's fees pursuant to 42 U.S.C. Section 1988. Plaintiffs are also
26 entitled to punitive damages pursuant to 42 U.S.C. Section 1983.

27
28

1 SECOND CAUSE OF ACTION

2 Violations of Civil Rights (Entity Liability) 42 U.S.C. § 1983

3 FOR A SECOND CAUSE OF ACTION AGAINST THE CITY OF STOCKTON,
4 AND DOES 51-100 FOR VIOLATIONS OF CIVIL RIGHTS PURSUANT TO 42 U.S.C.
5 SECTION 1983, PLAINTIFFS SALVADOR CORDOVA PIMENTEL INDIVIDUALLY
6 AND AS SUCCESSOR-IN-INTEREST TO DECEDENT ABELINO CORDOVA-
7 CUEVAS, AND MARIA CUEVAS DOMINGUEZ, ALLEGE:

8 28. Plaintiffs refer to each and every one of the above paragraphs, and
9 incorporate those paragraphs as though set forth in full in this cause of action.

10 29. The intentional and unconstitutional actions of Defendants Sergeant
11 Matthew Garlick and Officer Lucas Woodward and Does 1-50 as well as other officers
12 employed by or acting on behalf of the City of Stockton, on information and belief, were
13 pursuant to the following customs, policies, practices, and/or procedures of the
14 Stockton Police Department, which were directed, encouraged, allowed, and/or ratified
15 by policy making officers for the City of Stockton, and the Stockton Police Department,
16 including on information and belief the Chief of Police of the Stockton Police
17 Department:

- 18 A. To use or tolerate the use of excessive and/or unjustified force, including
19 the use of deadly force on unarmed non-violent individuals;
20 B. To use or tolerate the use of unlawful deadly force;
21 C. To cover-up violations of constitutional rights by:
22 1. Failing to properly investigate and/or evaluate complaints or
23 incidents of excessive and unreasonable force;
24 2. Ignoring and/or failing to properly and adequately investigate and
25 discipline unconstitutional or unlawful police activity; and
26 3. Using or tolerating inadequate, deficient, and improper procedures
27 for handling, investigating and reviewing complaints of officer
28

misconduct made under California Government Code Section 910
et seq.

D. Failing to implement procedural safeguards to prevent constitutional violations stemming from the use of excessive force, with actual or constructive notice that omitting these procedural safeguards was likely to result in the unconstitutional deprivation of life and liberty and the unconstitutional and unreasonable search and seizure of persons in the City of Stockton.

30. Defendants City of Stockton and Does 51-100 also failed to properly hire, train, instruct, monitor, supervise, evaluate, investigate, and discipline Defendants Sergeant Matthew Garlick and Officer Lucas Woodward and Doe Defendants 1-50 with deliberate indifference to Abelino's constitutional rights, which were thereby violated as described above. The City of Stockton and the Stockton Police Department's training program was not adequate to train its officers regarding the constitutional limits on the use of excessive force. The City of Stockton and the Stockton Police Department knew, because of a pattern of similar violations, or it should have been obvious to them, that the inadequate training program was likely to result in a deprivation of the right to life and liberty guaranteed by the Fourteenth Amendment and was likely to result in the unconstitutional and unreasonable search and seizure of citizens as guaranteed by the Fourth Amendment. Based on information and belief, the City of Stockton knew, or should have known, that Stockton police had used excessive force in many instances. Based on information and belief, policy making officials at the City of Stockton and the Stockton Police Department were aware of prior similar unconstitutional practices involving the unreasonable and excessive use of force, and the unjustified killing of individuals, yet condoned those practices or failed to train against a furtherance of those actions, which caused the officers to act as alleged above during the routine traffic stop of Abelino.

31. Defendants Sergeant Matthew Garlick and Officer Lucas Woodward and Does 1-50 violated Abelino's Fourteenth Amendment right to life and liberty and his Fourth Amendment right to be free from unreasonable searches and seizures, and the City of Stockton and the Stockton Police Department's failure to provide adequate training was a cause of the deprivation of those rights.

32. As a direct and proximate result of each Defendant's acts as set forth above, Salvador Cordova Pimentel and Maria Cuevas Dominguez suffered the loss of their son Abelino and Abelino's love, companionship, comfort, care, assistance, protection, affection, society, and moral support.

33. As a further proximate result of the aforementioned and unconstitutional conduct of defendants, Plaintiff Salvador Cordova Pimentel as successor-in-interest to Decedent Abelino Cordova-Cuevas brings a claim for the pre-death economic damages (such as damage to Abelino's clothing and personal property) and the pain and suffering inflicted on Abelino Cordova-Cuevas as his death was caused by the violation of federal law. (See *Chaudhry v. City of Los Angeles* (9th Cir. 2014) 751 F.3d 1096, 1105.)

34. As a further proximate result of the aforementioned unconstitutional conduct of Defendants, Plaintiffs were compelled to retain legal counsel and are entitled to reasonable attorney's fees pursuant to 42 U.S.C. Section 1988.

THIRD CAUSE OF ACTION

(Negligence Pursuant to Government Code § 820 and 815.2)

FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS CITY OF STOCKTON AND DOES 51-100 FOR NEGLIGENCE PURSUANT TO GOVERNMENT CODE §820 AND 815.2 PLAINTIFFS SALVADOR CORDOVA PIMENTEL INDIVIDUALLY AND AS A SUCCESSOR-IN-INTEREST TO DECEDENT ABELINO CORDOVA-CUEVAS AND MARIA CUEVAS DOMINGUEZ, ALLEGE:

35. Plaintiffs refer to each and every one of the above paragraphs, and incorporate those paragraphs as though set forth in full in this cause of action.

1 36. Plaintiffs allege this cause of action pursuant to Government Code §§ 820
2 and 815.2. California Government Code §820(a) provides that "a public employee is
3 liable for injury caused by his act or omission to the same extent as a private person."
4 Government Code §815.2(a) provides "[a] public entity is liable for injury proximately
5 caused by an act or omission of an employee of the public entity within the scope of his
6 employment if the act or omission would, apart from this section, have given rise to a
7 cause of action against that employee or personal representative."

8 37. A primary and fundamental objective of the Stockton Police Department
9 and its officers is to protect and serve the public.

10 38. At all times, the officers were within the course and scope of their
11 employment at all times herein mentioned, owed a duty to Plaintiffs to follow
12 recognized and established police procedures when attempting to subdue a person. The
13 officers, including Sergeant Garlick, Officer Woodward, and Does 1-50, also owed a
14 duty to Plaintiffs to use reasonable care in employing deadly force, and to avoid using
15 excessive force while pursuing and attempting to apprehend a person. Further, the
16 officers had a duty to refrain from unreasonably creating the situation where force,
17 including but not limited to deadly force, is used, and to use appropriate tactics and
18 force when attempting to detain someone.

19 39. Additionally, these general duties of reasonable care and due care owed to
20 Plaintiffs by Sergeant Garlick, Officer Woodward, and Does 1-50, include but are not
21 limited to the following specific obligations:

- 22 A. To properly and adequately hire, investigate, train, supervise, monitor,
23 evaluate and discipline employees, agents, and/or law enforcement
24 officers with the City of Stockton to ensure that those
25 employees/agents/officers act at all times in the public interest and in
26 conformance with the law and accepted police practices and policies;
- 27 B. To make, enforce, and at all times act in conformance with policies and
28 customs that are lawful and protective of individual rights; and

1 C. To refrain from making, enforcing, and/or tolerating the wrongful policies
2 and customs.

3 40. Defendants, through their acts and omissions, breached each and every
4 one of the aforementioned duties owed to the Plaintiffs because Sergeant Garlick,
5 Officer Woodward, and Does 1-50 were within the course and scope of their
6 employment when they negligently breached these duties, the City of Stockton and
7 Does 51-100 will be vicariously liable for the full extent of the harm their negligence
8 caused.

9 41. As a direct and proximate result of each Defendant's acts as set forth
10 above, Salvador Cordova Pimentel and Maria Cuevas Dominguez suffered the loss of
11 their son Abelino and Abelino's love, companionship, comfort, care, assistance,
12 protection, affection, society, and moral support.

13 14 FOURTH CAUSE OF ACTION

15 (Battery)

16 FOR A FOURTH CAUSE OF ACTION AGAINST ALL DEFENDANTS FOR
17 BATTERY, PLAINTIFFS SALVADOR CORDOVA PIMENTEL INDIVIDUALLY AND
18 AS A SUCCESSOR-IN-INTEREST TO DECEDENT ABELINO CORDOVA-CUEVAS
19 AND MARIA CUEVAS DOMINGUEZ, ALLEGE:

20 42. Plaintiffs refer to each and every one of the above paragraphs, and
21 incorporate those paragraphs as though set forth in full in this cause of action.

22 43. On March 7, 2016, between approximately 9:00 p.m. and 10:00 p.m., the
23 City of Stockton Police Department, through its officers, caused the death of beloved
24 son and brother Abelino Cordova-Cuevas. Stockton officers used excessive force on
25 Abelino during a traffic stop, including the use of a chokehold, Tasers, and other
26 physical force, which resulted in the tragic death of Abelino.

27 44. Defendants, with reckless and willful disregard of the rights of Abelino,
28 intentionally used excessive, unreasonable, and deadly force.

47. As a direct and proximate result of each Defendant's acts as set forth above Salvador Cordova Pimentel and Maria Cuevas Dominguez suffered the loss of their son Abelino and Abelino's love, companionship, comfort, care, assistance, protection, affection, society, and moral support.

FIFTH CAUSE OF ACTION

Violations of Abelino Cordova-Cuevas's Right to Enjoy Civil Rights (Cal. Civ. Code § 52.1)

FOR A FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS, AND DOES
1-100 FOR VIOLATIONS OF CIVIL RIGHTS PURSUANT TO 42 U.S.C. SECTION 1983,
PLAINTIFF SALVADOR CORDOVA PIMENTEL AS A SUCCESSOR-IN-INTEREST TO
DECEDENT ABELINO CORDOVA-CUEVAS ALLEGES:

48. Plaintiff, as the successor-in-interest to decedent Abelino Cordova-Cuevas, refers to each and every one of the above paragraphs, and incorporate those paragraphs as though set forth in full in this cause of action.

49. The actions of Defendants the City of Stockton, Sergeant Matthew Garlick and Officer Lucas Woodward and Does 1-100 as well as other officers employed by or acting on behalf of the City of Stockton, was conduct that constituted interference, and attempted interference, by threats, intimidation, coercion, and violence, with Abelino Cordova-Cuevas's exercise and enjoyment of rights secured by the Constitution and laws of the United States and the State of California, in violation of California Civil Code § 52.1.

50. The actions of Defendants were committed intentionally or with reckless indifference to the safety and health of Abelino Cordova-Cuevas, and interfered with,

1 through threats, coercion, intimidation, and violence, his constitutional rights to life,
2 liberty, and to be free from violence, excessive force, and unreasonable searches and
3 seizures.

4 51. As a proximate result of the actions of Defendants, Abelino ultimately lost
5 his life after the use of excessive and deadly force by Stockton police officers—
6 depriving him of multiple constitutional protections and rights safeguarded by the
7 United States and California that were blatantly ignored by the Defendants' intentional,
8 reckless, dangerous, and negligent conduct.

9 52. As a proximate result of the actions of Defendants, Plaintiffs incurred
10 damages to be shown at trial.

11 53. As a proximate result of the actions of Defendants, Plaintiffs were
12 compelled to retain legal counsel to prosecute the violation of Abelino Cordova-
13 Cuevas's civil rights, entitling Plaintiffs to both attorneys' fees (under Cal. Civ. Code §
14 52.1(h)) as well as a multiplier for the contingent nature of this representation.
15 (*Chaudhry v. City of Los Angeles* (9th Cir. 2014) 751 F.3d 1096, 1111-1112.)

16 PRAYER

17 WHEREFORE, Plaintiffs pray for damages against Defendants, and each of them
18 as follows:

19 **A. As to Plaintiffs Salvador Cordova Pimentel and Maria Cuevas Dominguez, for**
20 **damages as a result of the death of Abelino Cordova-Cuevas, plaintiffs pray**
21 **for judgment against the City of Stockton and Does 51-100 as follows:**

22 1. For all recoverable wrongful death noneconomic damages for loss of love,
23 companionship, comfort, care, assistance, protection, affection, society, and moral
24 support of Abelino Cordova-Cuevas, all in an amount to be proven at the time of trial;

25 2. For all recoverable wrongful death economic damages including loss of
26 economic support and loss of household services and loss of gifts and benefits that each
27
28

1 Plaintiff would have been expected to receive from Abelino Cordova-Cuevas in an
2 amount to be proven at the time of trial;

3 3. For all other general and special damages to the extent permitted by law;

4 4. For prejudgment interest to the extent permitted by law;

5 5. All other damages, penalties, costs, interest, and attorneys' fees as allowed
6 by 42 U.S.C. Section 1983 and 42 U.S.C. Section 1988;

7 6. All other damages, penalties, costs, interest, and attorneys' fees as allowed
8 by Cal. Civ. Code § 52.1, plus a multiplier of any lodestar to compensate for the risk of
9 contingent representation;

10 7. For the pre-death pain and suffering of Abelino Cordova-Cuevas,
11 pursuant to the violations of federal law under the successor-in-interest claims under 42
12 U.S.C. § 1983;

13 8. For the pre-death economic damages suffered by Abelino Cordova-
14 Cuevas, including the damage to his clothing and personal property, pursuant to the
15 violations of federal law under the successor-in-interest claims under 42 U.S.C. § 1983;

16 9. For costs of suit incurred herein; and

17 10. For such other and further relief as this court may deem just and proper.

18 **B. As to Plaintiffs Salvador Cordova Pimentel and Maria Cuevas Dominguez, for**
19 **damages as a result of the death of Abelino Cordova-Cuevas, plaintiffs pray**
20 **for judgment against Sergeant Matthew Garlick, Officer Lucas Woodward,**
21 **and Does 1-50 as follows:**

22 1. For all recoverable wrongful death noneconomic damages for loss of love,
23 companionship, comfort, care, assistance, protection, affection, society, and moral
24 support of Abelino Cordova-Cuevas, all in an amount to be proven at the time of trial;


25 2. For all recoverable wrongful death economic damages including loss of
26 economic support and loss of household services and loss of gifts and benefits that each
27 Plaintiff would have been expected to receive from Abelino Cordova-Cuevas in an
28 amount to be proven at the time of trial;

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial.

Dated: March 15 2017

BENTLEY & MORE, LLP

By: 

GREGORY L. BENTLEY

MATTHEW CLARK

NATASHA AXELROD

Attorneys for Plaintiffs

BENTLEY & MORE LLP

TELLING YOUR STORY

EXHIBIT A

CLAIM FOR DAMAGES

CITY OF STOCKTON

Note: Claims for bodily injury or death, damage to personal property, or damage to growing crops may be filed on this form, not later than six months after the occurrence out of which the claims arose. All other claims must be filed not later than one year after the occurrence out of which the claims arose. (Refer to California Government Code sections 910.4 and 911.2)

DIRECTION: The original claim must be filed with the City of Stockton City Clerk's Office, 425 North El Dorado Street, Stockton, California 95202. Retain the yellow copy for your records.

NAME OF CLAIMANT: Salvador Cordova Pimental, Maria Cuevas Dominguez; Estate of Abelino Cordova-Cuevas Date of Birth 10/20/59, 2/20/61
(Last) (First) (Middle)
HOME ADDRESS/PHONE: 600 South Indian Hill Blvd. Claremont, CA 91711 (909) 621-4935
(Number/Street) (City/State/Zip Code) (Phone Number)
BUSINESS ADDRESS/PHONE: 600 South Indian Hill Blvd. Claremont, CA 91711 (909) 621-4935
(Number/Street) (City/State/Zip Code) (Phone Number)

DIRECTION: Indicate to which address you wish notice sent ☒ HOME ☐ BUSINESS
WHEN DID INJURY OR DAMAGE OCCUR? March 7, 2018 Monday See Addendum to claim attached hereto
(Month/Day/Year) (Day of Week) (Time of Day)

WHERE DID INJURY OR DAMAGE OCCUR? See Addendum to claim attached hereto.
(Street address, intersecting streets, or other location)
See Addendum to claim attached hereto.

HOW DID INJURY OR DAMAGE OCCUR?
(Describe accident or occurrence in complete detail)
See Addendum to claim attached hereto.


NAME OF CITY EMPLOYEE(S) INVOLVED? See Addendum to claim attached hereto.

WHAT ACTION OR INACTION OF CITY EMPLOYEE(S) CAUSED YOUR INJURY OR DAMAGES?
See Addendum to claim attached hereto.

WHAT INJURIES OR DAMAGES DID YOU SUFFER?
See Addendum to claim attached hereto.

TOTAL AMOUNT CLAIMED: ☒ Unlimited case—over \$25,000.00 ☐ Limited case—\$25,000.00 or less
If under \$10,000.00, please specify amount \$

DIRECTION: Sign and date this Claim For Damages below. If the signer is not the claimant, indicate the relationship of the signer to the claimant.


(Signature) 08/02/2016 (Month/Day/Year) (Social Security Number-Optional)
Attorney for Claimants Salvador Cordova Pimental, Maria Cuevas Dominguez, and the Estate of Abelino Cordova-Cuevas
(Relationship of signer, if not claimant)

DIRECTION: You may attach and include with this completed form any bills for medical treatment and expenses, and any estimates or bills for personal property damage. Questions may be referred to (209) 937-8807

NOTE: PRESENTATION OF A FALSE CLAIM IS A FELONY (Refer to California Penal Code Section 72)



1 Gregory L. Bentley (State Bar No. 151147)

2 Matthew W. Clark (State Bar No. 273950)

3 Clare H. Lucich (State Bar No. 287157)

4 Natasha Axelrod (State Bar No. 273429)

SHERNOFF BIDART

ECHEVERRIA BENTLEY LLP

600 South Indian Hill Boulevard

Claremont, California 91711

Phone: (909)621-4935

Facsimile: (909)625-6915

Attorneys for Claimants

GOVERNMENTAL CLAIM AGAINST THE CITY OF STOCKTON

(CALIFORNIA GOVERNMENT CODE SECTION 910)

Salvador Cordova Pimental and Maria Cuevas Dominguez, on behalf of themselves and the Estate of Abelino Cordova-Cuevas, by and through their attorneys acting on their behalf, present a claim for damages against the City of Stockton (the City) pursuant to California Government Code Section 910.

1. Name And Address Of The Claimants:

Salvador Cordova Pimental and Maria Cuevas Dominguez

c/o Gregory L. Bentley

SHERNOFF BIDART ECHEVERRIA BENTLEY LLP

600 S. Indian Hill Blvd.

Claremont, CA 91711

(909) 621-4935/ FAX (909) 625-6915

2. Address Where Notices Are To Be Sent:

SHERNOFF BIDART ECHEVERRIA BENTLEY LLP

c/o Gregory L. Bentley

600 S. Indian Hill Blvd.

Claremont, CA 91711

(909) 621-4935/FAX (909) 625-6915



1 3. The date, place, and other circumstances giving rise to the claim asserted

2 A. When, where, and how the death of Abelino Cordova-Cuevas occurred.

3 On March 7, 2016, between approximately 9:00 p.m. and 10:00 p.m., the City of
4 Stockton Police Department caused the death of beloved son and brother Abelino
5 Cordova-Cuevas ("Abelino"). Stockton officers used excessive force on Abelino during
6 a traffic stop, including the use of a chokehold, Tasers, and other physical force, which
7 resulted in the tragic death of Abelino.

8 On March 7, 2016, Abelino was driving near El Dorado and Clay Streets in
9 Stockton when he was pulled over by Stockton police officers, primarily Sergeant
10 Matthew Garlick or Officer Lucas Woodward. The officers claimed the stop was for
11 "erratic driving." Witnesses saw Abelino standing on the sidewalk with his hands up
12 and a police officer (Sergeant Garlick or Officer Woodward) standing in the street
13 shining a flashlight toward him. Abelino repeatedly told the officer "I have no
14 weapons." Abelino started to back up westbound on the sidewalk, keeping his hands in
15 the air, lifting up his shirt, and again telling the officer he had no weapons.

16 At roughly the same time, another Stockton police officer (Sergeant Garlick or
17 Officer Woodward) arrived on motorcycle and parked across the street from where
18 Abelino was standing. Witnesses heard this officer trigger his Taser, with a very
19 distinctive crackling noise. Abelino was startled and scared, and began to run around
20 the corner, with another police SUV pulling up near where the motorcycle had stopped.
21 The identity of the police officer driving this SUV is unknown to claimants at this time.
22 The officer in the SUV followed Abelino and the other officers.

23 Surveillance footage from a nearby business shows Abelino walking backwards
24 with his hands up before being forcibly brought to the ground by Stockton police
25 officers. Witnesses heard screaming coming from the location where Abelino had gone,
26 and did not hear any officers yelling or saying anything. Witnesses described additional
27 police vehicles and motorcycles arriving to the scene around this time.

28



1 The surveillance video shows Abelino passively lying on the ground while
2 Stockton officers are using a chokehold or carotid restraint, and other unnecessary
3 force. Abelino then becomes unresponsive. American Medical Response ("AMR") was
4 called to the scene, and records from the AMR and the Stockton Fire Department
5 indicate Abelino was in full cardiac arrest on arrival with Taser wires sticking out of
6 him.

7 Stockton Fire Department records indicate Abelino had trauma to his head and
8 face, including lacerations and incisions. Hospital records indicate he had abrasions to
9 his right shoulder and right arm, a hematoma and left parietal abrasion to his scalp, and
10 "[p]er EMS patient was assaulted though unclear who was assaulting patient and then
11 police tased him 3 times and he collapsed..." Emergency personnel followed trauma
12 protocol and Abelino was transported to San Joaquin General Hospital where he was
13 pronounced dead shortly after arrival. Abelino never regained consciousness after he
14 went down.

15 The unreasonable use of deadly force by Stockton police officers was the cause of
16 Abelino's death. Police officers can only use reasonable force under the circumstances.
17 Stockton police officers used *excessive* force against an unarmed, non-violent person,
18 actively depriving a family of its son and brother as a result of Abelino's death.

19 Liability can be imposed under Title 42 United State Code section 1983, which
20 provides: "every person who, under color of any statute, ordinance, regulation, custom,
21 or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United
22 States or other person within the jurisdiction thereof to the deprivation of any rights,
23 privileges, or immunities secured by the Constitution and laws, shall be liable to that
24 party injured."

25 Stockton Police Department violated Abelino's rights under the Fourth and
26 Fourteenth Amendments. The use of force in this instance was excessive and
27 unreasonable. The United States Supreme Court has held that a "seizure occurs when
28 governmental termination of a person's movement is effected through means



1 intentionally applied." (*Brower v. County of Inyo* (1989) 489 U.S. 593.) Here, the officers
2 intended to terminate Abelino's movement—Sergeant Garlick and Officer Woodward
3 intentionally used Tasers on Abelino, forcefully brought him to the ground, used a
4 chokehold, and used physical force, ultimately resulting in his death.

5 Liability can also be imposed on the City of Stockton and the Stockton Police
6 Department because the deprivation of civil rights was based on the customs, policies,
7 or practices of the City of Stockton, which were directed, encouraged, or ratified by
8 policy making officers for the City of Stockton and the Stockton Police Department,
9 including the Chief of Police.

10 The Stockton officers and employees also violated Abelino's right to enjoy civil
11 rights pursuant to Cal. Civ. Code § 52.1. The actions of the Stockton officers constituted
12 interference, and attempted interference, by threats, intimidation, coercion, and
13 violence, with Abelino's exercise and enjoyment of rights secured by the Constitution
14 and laws of the United States and the State of California.

15 In addition to claims for violations of Abelino's civil rights, Stockton Police
16 Department and the officers were negligent for the unreasonable use of deadly force.
17 Upon information and belief, Stockton Police Department had policies in place for the
18 use of force, carotid restraints, and Tasers, which were not complied with. Stockton
19 Police Department also failed to have other proper policies in place which would have
20 prohibited the Stockton officers' improper conduct.

21 There was no evidence indicating Abelino was a dangerous felon posing any
22 threat to officers—he was unarmed during the entire confrontation with the officers.
23 Instead of taking reasonable and appropriate steps to subdue an unarmed suspect, they
24 used *excessive* physical force, including an illegal chokehold and/or carotid restraint and
25 multiple Taser firings. Abelino's right to life and liberty were violated by the officers.
26 Had they acted reasonably, he would be alive today.

27 The Stockton officers will also be liable for battery based on the unreasonable
28 and excessive force used on Abelino. Defendants intended to cause great bodily harm



or death to others without their consent by using Tasers, a chokehold or carotid restraint, and other unnecessary physical force on Abelino.

Finally, liability against a governmental entity such as the City of Stockton can be imposed when supervisory employees breach their duty to supervise subordinates and thereby expose third persons to harm. (*C.A. v. William C. Hart Union High School District* (2012) 53 Cal.4th 861, 875-879; *Dailey v. Los Angeles Unified Sch. Dist.* (1970) 2 Cal.3d 741, 747.) Here, the actions of the officers on March 7, 2016 show a clear failure in their training and supervision in subdoing suspects, the use of Tasers, the use of chokeholds and/or carotid restraints, and the use of deadly force. A minor traffic stop escalated into a violent physical confrontation resulting in Abelino's tragic death.

4. Action or inaction of city employee(s) caused the death of Abelino Cordova-Cuevas.

A. The Stockton Police officers violated Mr. Cordova-Cuevas' civil rights with their excessive use of deadly force.

The use of excessive force by police departments across the United States is now commonly on the news. Police have gone unchecked in their use of deadly force against unarmed persons. Abelino's tragedy in Stockton, California is another example of unrestrained police use of force in this country. When police can use deadly force easily and without repercussion, the results are inevitable—people will die.

Title 42 United State Code section 1983 provides that "every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to that party injured." Section 1983 claims may be brought in either state or federal court. (*Pitts v. County of Kern* (1998) 17 Cal.4th 340, 348.) Here, Sergeant Matthew Garlick and Officer Lucas Woodward were both on duty when they stopped Abelino. The other officers responding to the scene were also



1 on duty. There is no dispute they were acting under color of law when they deprived
2 Abelino of his right to life and liberty.

3 Liability under the Fourth Amendment occurs where a seizure occurs and the
4 force used is unreasonable under the circumstances. Here, the officers clearly intended
5 to prevent Abelino's movement—Sergeant Garlick, Officer Woodward, and other
6 officers intentionally used Tasers on Abelino, forcefully brought him to the ground,
7 used a chokehold and/or carotid restraint, ultimately resulting in his death. Abelino was
8 unarmed and not dangerous—the officers' lives were never threatened or in danger.

9 Liability under the Fourteenth Amendment occurs where police officers act with
10 deliberate indifference to a person's right to bodily integrity. The officers' used Tasers,
11 chokeholds and/or carotid restraint, and physical force on Abelino. There was no
12 immediate danger to anyone, and this was not an emergency where members of the
13 public or the officers involved were threatened. Abelino was unarmed. The conduct of
14 the officers was unreasonable and excessive. It deprived Abelino of his right to life and
15 liberty.

16 Further, the conduct of Sergeant Garlick, Officer Woodward, and other officers
17 employed by or acting on behalf of the City of Stockton was pursuant to the following
18 customs, policies, practices, and/or procedures of the Stockton Police Department,
19 which were directed, encouraged, allowed, and/or ratified by policy making officers for
20 the City of Stockton, and the Stockton Police Department, including on information and
21 belief the Chief of Police of the Stockton Police Department: to use or tolerate the use of
22 excessive and/or unjustified force; to use or tolerate the use of unlawful deadly force; to
23 cover-up violations of constitutional rights by failing to properly investigate and/or
24 evaluate complaints or incidents of excessive and unreasonable force; ignoring and/or
25 failing to properly and adequately investigate and discipline unconstitutional or
26 unlawful police activity; and using or tolerating inadequate, deficient, and improper
27 procedures for handling, investigating and reviewing complaints of officer misconduct
28 made under California Government Code Section 910 et seq.; failing to implement



1 procedural safeguards to prevent constitutional violations stemming from the use of
2 excessive force, with actual or constructive notice that omitting these procedural
3 safeguards was likely to result in the unconstitutional deprivation of life and liberty and
4 the unconstitutional and unreasonable search and seizure of persons in the City of
5 Stockton.

6 The City of Stockton and the Stockton Police Department's training program was
7 not adequate to train its officers regarding the constitutional limits on the use of
8 excessive force. The City of Stockton and the Stockton Police Department knew, because
9 of a pattern of similar violations, or it should have been obvious to them, that the
10 inadequate training program was likely to result in a deprivation of the right to life and
11 liberty guaranteed by the Fourteenth Amendment and was likely to result in the
12 unconstitutional and unreasonable search and seizure of citizens as guaranteed by the
13 Fourth Amendment. Based on information and belief, policy making officials at the City
14 of Stockton and the Stockton Police Department were aware of prior similar
15 unconstitutional practices involving the unreasonable and excessive use of force, and
16 the unjustified killing of individuals, yet condoned those practices or failed to train
17 against a furtherance of those actions, which caused the officers to act as alleged above
18 during the confrontation with Abelino.

19 Liability under Cal. Civ. Code § 52.1 occurs where an entity violates a person's
20 right to enjoy civil rights by interference, and attempted interference, by threats,
21 intimidation, coercion, and violence, with a person's exercise and enjoyment of rights
22 secured by the Constitution and laws of the United States and the State of California.

23 The actions of Stockton Police Department employees were committed
24 intentionally or with reckless indifference to the safety and health of Abelino, and
25 interfered with, through threats, coercion, intimidation, and violence, his constitutional
26 rights to life, liberty, and to be free from violence, excessive force, and unreasonable
27 searches and seizures.

28



1 **B. The decisions by the Stockton Police Department that led to the use of**
2 **deadly force establish its negligence.**

3 Government Code 820(a) provides that "a public employee is liable for injury
4 caused by his act or omission to the same extent as a private person." California
5 Government Code § 815.2 states that "(a) A public entity is liable for injury proximately
6 caused by an act or omission of an employee of the public entity within the scope of his
7 employment if the act or omission would, apart from this section, have given rise to a
8 cause of action against that employee or his personal representative."

9 The Stockton Police department and its officers failed to follow standard and
10 well-recognized protocols throughout the confrontation with Abelino including, but not
11 limited to department policies on use of force, physical restraint, and use of Tasers.
12 Based on the tactical conduct and decisions preceding and at the time of the use of
13 deadly force, the City of Stockton and its police department and officers' conduct was
14 unreasonable, and negligently caused Abelino's death. The City will be vicariously
15 liable for the excessive force employed by its officers.

16
17 **C. Stockton Police Officers committed battery against Abelino.**

18 Stockton Police Officers intended to cause great bodily harm or death to Abelino
19 without his consent by using Tasers, a chokehold or carotid restraint, and other
20 unnecessary physical force. Abelino neither consented to nor anticipated the officers'
21 conduct.

22
23
24 **D. The Stockton Police department was also negligent in its training and**
25 **supervision of its employees.**

26 Negligent supervision is a viable claim against a governmental entity when
27 supervisory employees breach their duty to supervise subordinates thereby exposing
28



third persons to harm. (*C.A. v. William C. Hart Union High School District* (2012) 53 Cal.4th 861, 875-879; *Dailey v. Los Angeles Unified Sch. Dist.* (1970) 2 Cal.3d 741, 747.)

The California Supreme Court has expanded the scope of the permissible evidence to support a negligence claim against police officers to include tactical conduct and decisions preceding the use of deadly force, (*Hayes v. County of San Diego* (2013) 57 Cal.4th 622). Claimants claim negligent supervision by supervisory employees of the police officers' conduct and decisions made during the attempted arrest. The Stockton police officers were not properly trained and supervised to subdue suspects and on the use of deadly force, including the use of Tasers and chokeholds and/or carotid restraints.

Reasonable supervision of its employees, Sergeant Garlick and Officer Woodward, would have required only an appropriate amount of non-deadly force on Abelino. The City is likewise vicariously liable for this failure.

5. A general description of damages and losses

Claimants Salvador Cordova Pimental and Maria Cuevas Dominguez —on behalf of themselves and the Estate of Abelino Cordova-Cuevas—seek all damages, relief, and remedies available to them under California and federal law for the death of their son, Abelino Cordova-Cuevas, including punitive and exemplary damages against the offending officers, the loss of familial relations with their son, as well as his pre-death pain, suffering, and economic damages.

In addition, Claimants Salvador Cordova Pimental and Maria Cuevas Dominguez will seek wrongful death damages for the loss of their son.

The legal standard for the measure of damages that a jury uses to evaluate the noneconomic value for the loss of the relationship resulting from the death of an adult is set forth in CACI 3921. These noneconomic damages include the loss of Abelino Corodva-Cuevas' love, companionship, comfort, care, assistance, protection, affection, society, moral support.



1 As a result of the death of their son, Salvador Cordova Pimental and Maria
2 Cuevas Dominguez have suffered the loss of their son's love, companionship, comfort,
3 care, assistance, protection, affection, and society and moral support.

4 Valuing these losses in dollars and cents is never easy, but according to the
5 National Vital Statics Reports, Abelino had a life expectancy of 55.3 years at the time of
6 his death. Salvador Cordova Pimental and Maria Cuevas Dominguez will miss out on
7 many years of spending time with their beloved son.

8 Salvador Cordova Pimental and Maria Cuevas Dominguez have also suffered
9 the following economic damages:

- 10 1. The value of financial support that Abelino Cordova-Cuevas would have
11 contributed to his parents; and
- 12 2. The loss of gifts or benefits that Salvador Cordova Pimental and Maria
13 Cuevas Dominguez would have expected to receive from Abelino Cordova-Cuevas.

14
15 5. Names of public employee or employees causing damage or loss

16 City of Stockton police officers:

17 Matthew Garlick

18 Lucas Woodward

19 Claimants believe there are additional employees and officers of the City of
20 Stockton police department who were involved with the events of March 7, 2016,
21 including the officers who arrived at the location where Abelino was first stopped and
22 the location where Abelino was taken down. Also, supervisors of the Stockton Police
23 Department regarding the training, hiring, supervision of officers regarding use of force
24 policies, use of physical restraint including chokeholds and/or carotid restraints, and
25 use of Tasers, as well as the supervisors who failed to monitor officers and detectives.

26

27

28



1 **6. Amount Claimed**

2 Government Code § 910(f) states "if the amount claimed exceeds ten thousand
3 dollars (\$ 10,000) no dollar amount shall be included in the claim. However, it shall
4 indicate whether the claim would be a limited civil case." The claims of Salvador
5 Cordova Pimental and Maria Cuevas Dominguez greatly exceed the amount stated in
6 Government Code § 910(f) and will be an unlimited civil case. The damages will exceed
7 the jurisdictional limit for a limited civil case.

8
9 Dated: August 27, 2016

Respectfully submitted,

10 SHERNOFF BIDART
11 ECHEVERRIA BENTLEY LLP

12 By 

13 GREGORY L. BENTLEY
14 Attorneys for Salvador Cordova
15 Pimental and Maria Cuevas Dominguez
16

Re: Claim of Abelino Cordova-Cuevas

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 600 South Indian Hill Boulevard, Claremont, California 91711.

On August 22, 2015, I served the foregoing documents described as **CLAIM FOR DAMAGES PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 910, ET SEQ** on the interested parties in this action by placing the original XX a true copy thereof enclosed in sealed envelopes addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

☒ BY CERTIFIED/RETURN RECEIPT MAIL I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Claremont, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

☐ BY FACSIMILE ("FAX") In addition to the manner of service indicated above, a copy was sent by FAX to the parties indicated on the service List.

☐ BY OVERNIGHT MAIL/COURIER To expedite service, copies were sent via FEDERAL EXPRESS.

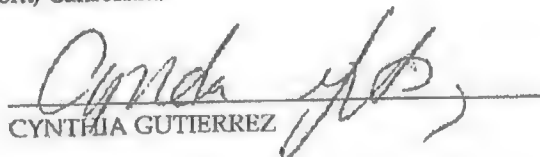
☐ VIA EMAIL I caused the document to be served via electronic mail to the email addresses listed on the service list

☐ BY PERSONAL SERVICE I caused to be delivered such envelope by hand to the individual(s) indicated on the service list.

☒ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 22, 2015, at Claremont, California.


CYNTHIA GUTIERREZ

Re: Claim of Abelino Cordova-Cuevas

SERVICE LIST

City Clerk's Office
CITY OF STOCKTON
425 North El Dorado Street
Stockton, CA 95202

CITY OF STOCKTON

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

City of Stockton
City Clerk's Office
425 North El Dorado Street
Stockton, CA 95202



9590 9403 0625 5183 6754 96

2. Article Number (Transfer from service label)

7015 0640 0003 7122 8884

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from Item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Insured Mail Restricted Delivery
(over \$500)☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☒ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

EXHIBIT B



CITY OF STOCKTON

HUMAN RESOURCES DEPARTMENT

400 E. Main Street, 3rd Floor • Stockton, CA 95202

Phone: 209 / 937-8233 • Fax 209 / 937-8558 • www.stocktongov.com

August 31, 2016

Shernoff Bidart Echeverria Bentley, LLP
Gregory Bentley
600 S Indian Hill Rd.
Claremont, CA 91711

Re: Claimants: Salvador Cordova Pimental; Maria Cuevas Dominguez;
Estate of Abelino Cordova-Cuevas

Dear Mr. Bentley:

This is to notify you that the claim which you submitted to the Office of the City Clerk for the City of Stockton on August 25, 2016, has been referred to the City's Liability Claims Investigator for handling.

Depending upon the nature of a claim, researching a claim can exceed forty-five (45) days pursuant to Government Code 912.4. You will be notified of the City's decision as soon as this process has been completed.

If you have any additional questions regarding this claim, please contact 209-937-8807.

Human Resources Department
City of Stockton

D/L: March 7, 2016

City File No.: 2015-2016-0425

EXHIBIT C



CITY OF STOCKTON

HUMAN RESOURCES DEPARTMENT

400 E. Main St., 3rd Floor • Stockton, CA 95202

Phone: 209 / 937-8233 • Fax: 209 / 937-8558 • www.stocktongov.com

October 25, 2016

Shernoff Bidart Echeverria Bentley, LLP
Gregory Bentley
600 S Indian Hill Blvd.
Claremont, CA 91711

Re: Claimants: Salvador Cordova Pimental; Maria Cuevas Dominguez;
Estate of Abelino Cordova-Cuevas
City File No.: 2015-2016-0425

Notice Is Hereby Given that the claim you filed with the Office of the City Clerk for the City of Stockton on August 25, 2016 was rejected by Operation of Law on October 10, 2016. Government Code Section 913 requires the following warning be given when a claim is rejected.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action in a municipal or superior court of the State of California on this claim. See Government Code Section 945.6. This warning applies only to State claims, and does not apply to statutes of limitations for Federal causes of action.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

By

Ken Minas
Liability Claims



STATE OF CALIFORNIA)
COUNTY OF SAN JOAQUIN)

PROOF OF SERVICE

ss:

I am a citizen of the United States and am employed in the County of San Joaquin. I am over the age of eighteen (18) years and am not a party to the within above-titled action. My business address is 400 E Main St. - 3rd Floor, Stockton, CA 95202.


I am readily familiar with the City of Stockton's practice for collection and processing of correspondence for mailing with the United States Postal Service and that the correspondence would be deposited with the United States Postal Service in the County of San Joaquin, California that same day in the ordinary course of business.

On the date noted below, I served the within **Notice of Rejection** on the persons interested in said action by placing true copies thereof enclosed in sealed envelopes in the designated area for outgoing mail addressed as set forth below:

Shernoff Bidart Echeverria Bentley, LLP
Gregory Bentley
600 S Indian Hill Blvd.
Claremont, CA 91711

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Executed at Stockton, California.



Raeann Cycenas

10-25-2016

Date

2015-2016-0425



DANIEL MALAKAUSKAS, SBN 265903
P.O. Box 7006
Stockton, CA 95267
Tel: 866-790-2242
Fax: 888-802-2440
daniel@malakauskas.com

Attorney for PLAINTIFFS:
MONTE MCFALL,
and **PATRICIA HUTCHINSON**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

MONTE McFALL, and PATRICIA
HUTCHINSON,

PLAINTIFFS,

v.

COUNTY OF SAN JOAQUIN, JIMMY
FRITTS, in his official and individual
capacities, **DAVID DIRKSON,** in his official
capacity, **STEVEN MOORE,** in his official
capacity, **ERIC JONES,** in his official capacity,
TORY SALAZAR, in her official capacities,
and individual capacities, **CITY OF**
STOCKTON, and Does 1 through 50,
inclusive.

DEFENDANTS.

Case No.:

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF RESULTING
FROM:

- 1. Violations of 42 U.S.C. §1983 for**
violations of Plaintiffs Constitution
Rights Granted Under the Fourth,
Fifth, Eighth and Fourteenth
Amendments;
- 2. Violations of The Bane Act, Cal. Civ.**
C. §52.1;
- 3. Malicious Prosecution;**
- 4. Conversion and, or, Theft;**
- 5. Abuse of Process;**
- 6. False Arrest;**
- 7. Excessive Force;**
- 8. Illegal Search and Seizure;**
- 9. Trespass;**
- 10. Intentional, or, Negligent;**
Misrepresentation;
- 11. Invasion of Privacy; and,**
- 12. Negligent Infliction of Emotional**
Distress

DEMAND FOR JURY TRIAL

COMPLAINT BY PLAINTIFFS, MONTE MCFALL, AND PATRICIA HUTCHINSON, AGAINST
DEFENDANTS, SAN JOAQUIN COUNTY, et al., FOR DAMAGES AND INJUNCTIVE RELIEF

Comes now the Plaintiff, MONTE MCFALL, (hereafter, "McFall") and, PATRICIA HUTCHINSON (Hereafter, "Hutchinson", or collectively "Plaintiffs") through their Attorney, DANIEL MALAKAUSKAS, P.O. Box 7006, Stockton, CA 95267; Telephone: (866) 790-2242; Facsimile: (888) 802-2440; who, having been denied his civil rights, hereby respectfully alleges, avers, and complains as follows:

**THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA,
EASTERN DIVISION, HAS JURISDICTION AND IS THE PROPER VENUE FOR
PLAINTIFFS TO SEEK JUSTICE**

1. The United States District Court has original federal question jurisdiction of the action pursuant to 28 U.S.C. §1331, because Plaintiffs' claims arise under 42 U.S.C. §1983. The United States District Court has supplemental jurisdiction over all state claims pursuant to 28 U.S.C. §1367, because Plaintiffs' state law claims arise from a common nucleus of operative facts as the federal court claims such that Plaintiffs would ordinarily be expected to try them all in a single judicial proceeding.

2. Venue in this Court is proper under 28 U.S.C. §1391(b)(2) as the claims alleged herein arose in the Eastern, specifically at the real property located at 1400 and 1410 Frewert Road, in Lathrop, California, 95330.

3. The Sacramento Division of the Central District of California, is the proper intradistrict because all claims herein arose at the real property located at 1400 and 1410 Frewert Road, in Lathrop, California, 95330

THE VICTIM AND THOSE RESPONSIBLE

**COMPLAINT BY PLAINTIFFS, MONTE McFALL, AND PATRICIA HUTCHINSON, AGAINST
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1 4. Plaintiff, Monte McFALL is a senior citizen and was a tenant of 1400 and, or, 1410
2 Frewert Road, Lathrop, California, 95330 during the date of the incident.

3 5. Plaintiff, Patricia HUTCHINSON is a senior citizen and was a tenant of 1400 and, or,
4 1410 Frewert Road, Lathrop, California, 95330 during the date of the incident.

5 6. Defendant SAN JOAQUIN COUNTY, (Hereafter, "DEFENDANT I") headed by the
6 Board of Supervisors for San Joaquin County, is and at all times herein mentioned the local
7 government presiding over San Joaquin County with its principal office at 44 North San Joaquin
8 Street, Stockton, CA 95202.

9 7. Defendant, JIMMY FRITTS, (Hereafter, "DEFENDANT II") is sued in his individual
10 and official capacities as both a San Joaquin Sheriff and, or, Stockton Police Officer. JIMMY
11 FRITTS, is and was at all times herein mentioned was an employee of the San Joaquin County, and,
12 or, City of Stockton, acting under the color of law within the scope of his employment, and plaintiffs
13 are informed and believe, at all times herein mentioned, that JIMMY FRITTS was and is a resident
14 of San Joaquin County.

15 8. Defendant, DAVID DIRKSON, (Hereafter, "DEFENDANT III") is sued in his
16 individual and official capacities as Chief District Attorney Investigator. DIRKSON, is and was at
17 all times herein mentioned was an employee of the San Joaquin County, acting under the color of
18 law within the scope of his employment, and plaintiffs are informed and believe, at all times herein
19 mentioned, that DIRKSON was and is a resident of San Joaquin County.

20 9. Defendant, STEVEN MOORE (Hereafter, "DEFENDANT IV") is sued in his official
21 capacities as the Sheriff for San Joaquin County. STEVEN MOORE, is and was at all times herein
22 mentioned was an employee of the San Joaquin County, acting under the color of law within the
23

1 scope of his employment, and plaintiffs are informed and believe, at all times herein mentioned, that
2 STEVEN MOORE was and is a resident of San Joaquin County.

3 10. Defendant, ERIC JONES (Hereafter, "DEFENDANT V") is sued in his official
4 capacities as the Chief of Police. ERIC JONES, is and was at all times herein mentioned was an
5 employee of the San Joaquin County, and, or City of Stockton, acting under the color of law within
6 the scope of his employment, and plaintiffs are informed and believe, at all times herein mentioned,
7 that ERIC JONES was and is a resident of San Joaquin County.
8

9 11. Defendant, TORY SALAZAR (Hereafter, "DEFENDANT VI") is sued in her official
10 capacities as the District Attorney for San Joaquin County. TORY SALAZAR, is and was at all
11 times herein mentioned was an employee of the San Joaquin County, acting under the color of law
12 within the scope of her employment, and plaintiffs are informed and believe, at all times herein
13 mentioned, that TORY SALAZAR was and is a resident of San Joaquin County.
14

15 12. Defendant CITY OF STOCKTON, (Hereafter, "DEFENDANT VII") headed by the
16 Board of Supervisors for Stockton City Council, is and at all times herein mentioned the local
17 government presiding over the City of Stockton with its principal office at 425 North El Dorado
18 Street, Stockton, CA 95202.
19

20 13. The true names and capacities of the Defendants named herein as DOES 1 through
21 50, inclusive, whether individual, corporate, partnership, association, or otherwise, are unknown to
22 Plaintiff who therefore sues these Defendants by such fictitious names. Plaintiff will request leave
23 of court to amend complaint to alleged their true names and capacities at such times as they are
24 ascertained.
25

26 14. Plaintiff is informed and believes and thereon alleges that each of the defendant,
27 including Does 1 through 50, caused and is responsible for the below described unlawful conduct
28

1 and resulting injuries by, among other things, personally participating in the unlawful conduct or
2 acting jointly or conspiring with other who did so; by authorizing, acquiescing in or setting in
3 motion policies, plans or actions that led to the unlawful conduct; by failing to take action to prevent
4 the unlawful conduct; by failing and refusing with deliberate indifference to plaintiffs' rights to
5 initiate and maintain adequate training and supervision; and by ratifying the unlawful conduct that
6 occurred by agents, and officers or entities under their direction and control.
7

8 15. In doing the acts alleged herein, defendants and each of them, on information and
9 belief, were personally aware of the possibility of personal injury, and denial of liberty and due
10 process, which could and did result from the alleged misconduct of the defendants.
11

12
13 **IT IS A TRAJIC DAY WHEN THE POLICE FRAME INNOCENT SENIOR CITIZENS IN**
14 **ORDER TO STEAL THEIR MONEY**

15 16. While Sheriff Deputy, and, or, Officer¹ Jimmy Fritts was investigating an unrelated
16 individual, Sheriff Deputy Jimmy Fritts violated the rights of Mr. Monte McFall and Ms. Patricia
17 Hutchinson.
18

19 17. Specifically, during the course of an investigation, Deputy Fritts discovered that
20 marijuana was growing at 1400 Frewert Road in Lathrop, California. The 1400 Frewert Road
21 property was in the zoned agricultural area of San Joaquin County and had multiple tenants.
22

23 18. The multiple tenants at 1400 Frewert Road, included, but are were not limited to,
24 Monte McFall and Patricia Hutchinson. Realizing that Monte McFall resided at 1400 Frewart Road,
25 Deputy Fritts desired to illegally arrest and prosecute Monte McFall.
26

27 ¹ Claimants believe that Jimmy Fritts, as a lead investigator for certain controlled substances, works jointly under the
28 supervision, and is an agent, of both the San Joaquin County Sheriff's Office as well as the Stockton Police Department.

1 19. Despite Deputy Fritts knowing that Stage Coach, Inc., owned the property, Deputy
2 Fritts lied on his affidavits for his search and, or, arrest warrants, claiming that Monte McFall owned
3 the property. In addition, although any marijuana grown on the property would have been legal at
4 the time, and stayed legal under the Farmer's Right to Grow Act, Deputy Fritts lied on his affidavit
5 for his search and, or, arrest warrants, stating that McFall and Patricia Hutchinson had violated San
6 Joaquin County Ordinance Code §4-10006. This was impossible as San Joaquin County Ordinance
7 4-10006 had not gone into effect at that time.
8

9 20. During his illegal search of the residence of Monte McFall and Patricia Hutchinson,
10 on or around, November 5th, 2015, Deputy Fritts seized \$16,000.00 in United States Currency and
11 arrested Monte McFall and Patricia Hutchinson. In order to justify the arrest and seizures, Deputy
12 Fritts claimed that bell pepper and cucumber plants were marijuana plants. Although he took
13 samples of other marijuana plants he allegedly found, Deputy Fritts failed to take any samples of the
14 bell pepper and cucumber plants that he used to justify the arrests of Plaintiffs.
15

16 22. When it was discovered that Deputy Fritts committed perjury on the affidavits, the
17 District Attorney's Office initially refused to stop McFall's prosecution until he agreed not to pursue
18 any legal action against Deputy Fritts. In addition, the District Attorney office refused to investigate
19 any reports or complaints that McFall made against Fritts. Specifically, Monte McFall contacted
20 Chief District Attorney Officer Dirkson to make a complaint about Fritts. Dirkson refused to take
21 any formal complaint and told McFall he had to discuss the situation with Tori Salazar before taking
22 any formal complaint. Dirkson told McFall he would subsequently contact McFall. Dirkson to this
23 day has never contacted McFall.
24

25 22. Plaintiffs assert that the illegal activities and violations of their rights occurred not
26 only due to the individual actions of Fritts and Dirkson, but also due to the policies, procedures,
27
28

1 customs and practices, and directions of the leaders or supervisory officials, of the San Joaquin
2 County Sheriff's Office, the San Joaquin County District Attorney's Office, and the Stockton Police
3 Department.

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5
6
7 **FIRST CLAIM**
8 **42 U.S.C. §1983**
(As to all Defendants)

9 23. Plaintiff hereby incorporates and re-alleges, as if fully set forth herein, each and every
10 allegation contained in all prior and subsequent paragraphs.

11 24. DEFENDANTS I-VII Deprived Plaintiffs of their rights under the Fourth
12 Amendment to the Constitution to be free from unreasonable searches and seizures. Plaintiffs'
13 persons, houses, papers and effects were unreasonable searched and seized when a warrant was
14 issued without probable cause. The warrant was issued based upon the perjury of Jimmy Fritts and
15 ratified, approved, and accepted by the policies, procedures, and failures of Defendants I and IV
16 through VII.
17

18 25. DEFENDANTS I-VII deprived Plaintiffs of their rights under the Fifth Amendment
19 by denying Plaintiffs of their liberty and property without due process of law. The illegal acts of
20 Jimmy Fritts and the ratification, approval, and acceptance, of his acts by the policies and procedures
21 and actions of Defendants I, and III through VII effectively denied Plaintiffs due process.
22

23 26. DEFENDANTS I-VII further deprived Plaintiffs of their rights under the Fifth
24 Amendment by seizing the private property of Plaintiffs and taking it for public use without just
25 compensation by the facts alleged above. The illegal acts of Jimmy Fritts and the ratification,
26
27
28

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1 approval, and acceptance, of his acts by the policies and procedures and actions of Defendants I, and
2 III through VII effectively took the property of Plaintiffs without just compensation.

3 27. DEFENDANTS I-VII further deprived Plaintiffs of their rights under the Eight
4 Amendment by inflicting cruel and unusual punishment on Plaintiffs. As Plaintiff's arrest and
5 seizures were based upon the illegal acts of Jimmy Fritts mentioned above such arrest and seizure
6 became cruel and unusual punishment under the Eight Amendment. The illegal acts of Jimmy Fritts
7 and the ratification, approval, and acceptance, of his acts by the policies and procedures and actions
8 of Defendants I, and III through VII made such arrest and seizure become cruel and unusual
9 punishment.
10

11 28. DEFENDANTS I-VII Deprived Plaintiffs of their rights under the Fourteenth
12 Amendment to the Constitution which provides that no person shall be deprived of life, liberty or
13 property without due process of law as applied to the states in the manner described above.
14

15 29. Plaintiffs pray for judgment as set below.
16
17

18 **SECOND CLAIM**
19 **The Bane Act**
20 **Cal. Civ. Code §52.1**
21 **(As to all Defendants)**

22 30. Plaintiff hereby incorporates and re-alleges, as if fully set forth herein, each and every
23 allegation contained in all prior and subsequent paragraphs.

24 31. DEFENDANTS I through VII interfered with Plaintiffs' constitutional rights under
25 the Fourth, Fifth, Eighth, and Fourteenth Amendments by threatening Plaintiff's with incarceration
26 and the loss of their property as well as what could be deemed as a form of assault and battery of
27 Plaintiffs.
28

32. Plaintiffs reasonable believed the threats from DEFENDANTS I through VII. DEFENDANTS I through VII injured Plaintiffs and their property to further prevent Plaintiffs from exercising their rights under the law, including, but not limited to, the Fourth, Fifth, Eighth and Fourteenth Amendment of the Constitution. Plaintiffs were harmed as a result of the illegal acts of Jimmy Fritts and the ratification, approval, and acceptance, of his acts by the policies and procedures and actions of Defendants I, and III through VII. These actions of DEFENDANTS I through VII were a substantial factor in causing harm to the Plaintiffs.

33. Plaintiffs pray for judgment as set below.

**THIRD CLAIM
Malicious Prosecution
(As to all Defendants)**

34. Plaintiff hereby incorporates and re-alleges, as if fully set forth herein, each and every allegation contained in all prior and subsequent paragraphs.

35. DEFENDANTS I through VII were actively involved in bringing the Criminal Cases of the People of the State of California vs. Monte McFall, and the People of the State of California v. Patricia Hutchinson. DEFENDANTS I through VII were also actively involved in bringing the asset forfeiture case of People of the State of California vs. 16,000 in U.S. Currency.

36. Both lawsuits ended in Plaintiff's favor.

37. No reasonable person, given the circumstances known to DEFENDANTS I through VII would have believed that there were reasonable grounds to bring the lawsuit against Plaintiffs.

38. DEFENDANTS I through VII acted primarily for a purpose other than succeeding on the merits on the claim.

39. Both Plaintiffs were harmed as a result of the conduct of DEFENDANTS I through VII, and such conduct was a substantial factor in the harm of Plaintiffs.

40. Plaintiffs pray for judgment as set below.

FOURTH CLAIM
Conversion and, or, Theft
(As to all Defendants)

41. Plaintiff hereby incorporates and re-alleges, as if fully set forth herein, each and every allegation contained in all prior and subsequent paragraphs.

42. Plaintiffs had a right to possess their \$16,000.00 in U.S. currency.

43. DEFENDANTS I through VII intentionally and substantially interfered with Plaintiffs' property by seizing it and refusing to return to Plaintiffs their currency. Plaintiffs never consented to their currency being taken and were harmed by being deprived of their property and having to pay attorney fees to recover their property. The conduct of DEFENDANT I through VII was a substantial factor in causing the Plaintiffs' harm in that DEFENDANTS I through VII acted illegally or ratified, approved or accepted the illegal acts of others through their direct actions or through their policies, procedures, customs and practices.

44. Plaintiffs pray for judgment as set below.

FIFTH CLAIM
Abuse of Process
(As to all Defendants)

45. Plaintiff hereby incorporates and re-alleges, as if fully set forth herein, each and every allegation contained in all prior and subsequent paragraphs.

1 46. DEFENDANTS I through VII acted illegally or ratified, approved or accepted the
2 illegal acts of others through their direct actions or through their policies, procedures, customs and
3 practices, in order to initiate criminal and asset forfeiture proceedings against Plaintiffs.

4 47. DEFENDANT I through VII intentionally used these legal procedures for the
5 improper purpose of seizing and taking property that DEFENDANTS knew that was legally and
6 rightly the property of Plaintiffs. Plaintiffs were harmed by being deprived of their property and
7 having to pay attorney fees to receive their property. The conduct of DEFENDANTS I through VII
8 was a substantial factor in causing the Plaintiffs' harm and DEFENDANTS I through VII acted
9 illegally or ratified, approved or accepted the illegal acts of others through their direct actions or
10 through their policies, procedures, customs and practices.
11

12 48. Plaintiffs pray for judgment as set below.
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16 **SIXTH CLAIM**
17 **False Arrest**
18 **(As to all Defendants)**

19 49. Plaintiff hereby incorporates and re-alleges, as if fully set forth herein, each and every
20 allegation contained in all prior and subsequent paragraphs.
21

22 50. DEFENDANT II arrested Plaintiffs. DEFENDANT II intentionally caused Plaintiffs
23 to be wrongfully arrested by perjuring the arrest warrant and for falsely stating that cucumber and
24 bell pepper plants were marijuana. Plaintiffs were harmed by being deprived of their property,
25 having to pay attorney fees to receive their property, being subjected to threats of prosecution, and
26 for being subject to what could be considered assault and battery.
27
28

1 51. DEFENDANTS I through VII acted illegally or ratified, approved or accepted the
2 illegal acts of others through their direct actions or through their policies, procedures, customs and
3 practices, in order to initiate criminal and asset forfeiture proceedings against Plaintiffs in order to
4 allow the false arrest of Plaintiffs. The conduct of DEFENDANTS I through VII was a substantial
5 factor in causing the Plaintiffs' harm, and DEFENDANTS I through VII acted illegally or ratified,
6 approved or accepted the illegal acts of others through their direct actions or through their policies,
7 procedures, customs and practices.
8

9 52. Plaintiffs pray for judgment as set below.
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11

12 **SEVENTH CLAIM**
13 **Excessive Force**
14 **(As to all Defendants)**

15 53. Plaintiff hereby incorporates and re-alleges, as if fully set forth herein, each and every
16 allegation contained in all prior and subsequent paragraphs.
17

18 54. DEFENDANT II used force in arresting the Plaintiffs. DEFENDANT II destroyed
19 property at the Plaintiffs' dwelling and caused property damage. The force used by DEFENDANT
20 II was excessive. DEFENDANT II was acting, or purporting acting, in the performance of his
21 official duties. Plaintiffs were harmed as a result. The actions of DEFENDANT II use of excessive
22 force was a substantial factor in causing the Plaintiffs' harm. DEFENDANTS I, and III through VII
23 acted illegally or ratified, approved or accepted the illegal acts of others in order to allow the false
24 arrest of Plaintiffs either through its direct actions or through its policies, procedures, customs and
25 practices.
26

27 55. Plaintiffs pray for judgment as set below.
28

EIGHT CLAIM
Illegal Search and Seizure Force
(As to all Defendants)

56. Plaintiff hereby incorporates and re-alleges, as if fully set forth herein, each and every allegation contained in all prior and subsequent paragraphs.

57. DEFENDANT II and DOES 1 through 50 searched Plaintiffs' home. The search of Plaintiffs' home was unreasonable as DEFENDANT II committed perjury to obtain the warrant and justified the search based upon alleging that cucumber and bell pepper plants were marijuana plants. DEFENDANT II and Does 1 through 50 were acting or purporting to act in the performance of his official duties. Plaintiffs were harmed. The conduct of DEFENDANTS I through VII was a substantial factor in causing the Plaintiffs' harm, and DEFENDANTS I through VII acted illegally or ratified, approved or accepted the illegal acts of others through their direct actions or through their policies, procedures, customs and practices.

58. Plaintiffs pray for judgment as set below.

NINTH CLAIM
Trespass
(As to all Defendants)

59. Plaintiff hereby incorporates and re-alleges, as if fully set forth herein, each and every allegation contained in all prior and subsequent paragraphs.

60. Plaintiffs leased the house and surrounding area that Defendant II and Does 1 through intentionally entered. Plaintiffs' did not give DEFENDANT II and Does 1 through 50 permission to enter the property. Plaintiffs were harmed by having their property seized and damaged. The actions of DEFENDANT II's trespass was a substantial factor in causing the Plaintiffs' harm.

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DEFENDANTS, SAN JOAQUIN COUNTY, et al., FOR DAMAGES AND INJUNCTIVE RELIEF

1 DEFENDANTS I, and III through VII acted illegally or ratified, approved or accepted the illegal
2 acts of others in order to allow the false arrest of Plaintiffs either through its direct actions or through
3 its policies, procedures, customs and practices.

4 61. Plaintiffs pray for judgment as set below.
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7 **TENTH CLAIM**
8 **Intentional, and, or Negligent Misrepresentation**
9 **(As to all Defendants)**

10 62. Plaintiff hereby incorporates and re-alleges, as if fully set forth herein, each and every
11 allegation contained in all prior and subsequent paragraphs.

12 63. DEFENDANT II represented as true, that he had a legally valid warrant.
13 DEFENDANT II did not have a legally valid warrant. DEFENDANT II had no reasonable grounds
14 for believing the representation was true. DEFENDANT II intended that Plaintiffs would rely upon
15 his representation concerning the warrant. Plaintiffs reasonably relied upon such representation. As
16 a result, Plaintiffs relied upon DEFENDANT II's misrepresentation to allow DEFENDANT II into
17 the house. Plaintiffs were harmed by having their property seized and damaged. The actions of
18 DEFENDANT II's misrepresentation was a substantial factor in causing the Plaintiffs' harm.
19 DEFENDANTS I, and III through VII acted illegally or ratified, approved or accepted the illegal
20 acts of others in order to allow the false arrest of Plaintiffs either through its direct actions or through
21 its policies, procedures, customs and practices.
22

23 64. Plaintiffs pray for judgment as set below.
24
25
26

27 **ELEVENTH CLAIM**
28 **Invasion of Privacy**
(As to all Defendants)

COMPLAINT BY PLAINTIFFS, MONTE McFALL, AND PATRICIA HUTCHINSON, AGAINST
DEFENDANTS, SAN JOAQUIN COUNTY, et al., FOR DAMAGES AND INJUNCTIVE RELIEF

1 65. Plaintiff hereby incorporates and re-alleges, as if fully set forth herein, each and every
2 allegation contained in all prior and subsequent paragraphs.

3
4 66. Plaintiffs leased the house and surrounding area as a residence that DEFENDANT II
5 and DOES 1 through 50 entered. DEFENDANT II intentionally intruded into the house leased by
6 Plaintiffs. DEFENDANT II's intrusion would be highly offensive to a reasonable person. Plaintiffs
7 were harmed by having their property seized and damaged. The actions of DEFENDANT II's
8 invasion of Privacy was a substantial factor in causing the Plaintiffs' harm. DEFENDANTS I, and
9 III through VII acted illegally or ratified, approved or accepted the illegal acts of others in order to
10 allow the false arrest of Plaintiffs either through its direct actions or through its policies, procedures,
11 customs and practices.

12
13 67. Plaintiffs pray for judgment as set below.
14
15

16 **TWELTH CLAIM**
17 **Negligent Infliction of Emotional Distress**
18 **(As to all Defendants)**

19 68. Plaintiff hereby incorporates and re-alleges, as if fully set forth herein, each and every
20 allegation contained in all prior and subsequent paragraphs.

21 69. As a result of the outrageous conduct described above, Plaintiffs suffered emotional
22 distress.

23 70. The negligent and intentional conduct of DEFENDANTS I through VII, as described
24 above, was a substantial factor in causing Plaintiffs to suffer serious emotional distress.

25 71. Plaintiffs pray for judgment as set below.
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27

28 **PRAYER**

COMPLAINT BY PLAINTIFFS, MONTE McFALL, AND PATRICIA HUTCHINSON, AGAINST
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1 WHEREFORE, Plaintiff prays the following:

2 1. For injunctive relief pursuant to 42 U.S.C. §1983 directing all DEFENDANTS to
3 modify their policies, procedures, and training as required by law to comply with the Constitutional
4 of the United States and ensure that the Constitutional rights of individuals, including Plaintiffs, is
5 no longer violated by Defendants, and to retain jurisdiction over DEFENDANTS until such time as
6 the District Court is satisfied that DEFENDANTS' unlawful policies, practices, acts and omissions
7 no longer occur, and will not recur;

9 2. For judgment, interest, and cost of the suit;

10 3. For compensatory, general and special damages;

11 4. For prejudgment interest;

12 5. For statutory damages;

13 6. for Attorney Fees;

14 7. For Punitive Damages

15 8. Grant such other and further relief as this District Court may deem just and proper.

16 Dated: April 20th, 2017

17
18
19 /s/ Daniel Malakauskas
20 By: DANIEL MALAKAUSKAS
21 Attorney for PLAINTIFFS

22 **DEMAND FOR JURY TRIAL**

23 Plaintiffs herein demand that the causes of action set forth be tried in front of a jury.

24
25 Dated: April 20th, 2017

26 /s/ Daniel Malakauskas
27 By: DANIEL MALAKAUSKAS
28 Attorney for PLAINTIFFS

COMPLAINT BY PLAINTIFFS, MONTE McFALL, AND PATRICIA HUTCHINSON, AGAINST
DEFENDANTS, SAN JOAQUIN COUNTY, et al., FOR DAMAGES AND INJUNCTIVE RELIEF

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Cory S. Stone 2428 S. Fresno Ave. STKN. CA. 95206 TELEPHONE NO: (209) 939-0741 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):		FOR COURT USE ONLY FILED SUPERIOR COURT - STOCKTON 2017 APR 28 PM 2:25 ROSA JUNQUEIRO, CLERK BY: LORNA GUERRERO
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Joaquin STREET ADDRESS: Superior Court MAILING ADDRESS: E. Weber Ave. STKN CA. CITY AND ZIP CODE: 180 STE 200 95202 BRANCH NAME:		
PLAINTIFF: Cory Scott Stone DEFENDANT: Stockton Police Department <input type="checkbox"/> DOES 1 TO _____		
<input checked="" type="checkbox"/> COMPLAINT <input type="checkbox"/> CONTRACT <input type="checkbox"/> AMENDED COMPLAINT (Number): <input type="checkbox"/> CROSS-COMPLAINT <input type="checkbox"/> AMENDED CROSS-COMPLAINT (Number):		
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 5,000,000 <input type="checkbox"/> exceeds \$10,000 but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint or cross-complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited		CASE NUMBER: STK-CV- UPN -2017- 4312

1. Plaintiff* (name or names): **Cory Scott Stone**

alleges causes of action against defendant* (name or names):

Stockton Police Department

2. This pleading, including attachments and exhibits, consists of the following number of pages: **30 pgs.**

3. a. Each plaintiff named above is a competent adult

☐ except plaintiff (name):

- (1) ☐ a corporation qualified to do business in California
 (2) ☐ an unincorporated entity (describe):
 (3) ☐ other (specify):

**THIS CASE HAS BEEN ASSIGNED TO
JUDGE LINDA L. LOFTHUS IN
DEPARTMENT 10A FOR ALL PURPOSES,
INCLUDING TRIAL**

b. ☐ Plaintiff (name):

a. ☐ has complied with the fictitious business name laws and is doing business under the fictitious name (specify):

b. ☐ has complied with all licensing requirements as a licensed (specify):

c. ☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3c.

4. a. Each defendant named above is a natural person

☐ except defendant (name):

- (1) ☐ a business organization, form unknown
 (2) ☐ a corporation
 (3) ☐ an unincorporated entity (describe):
 (4) ☐ a public entity (describe):
 (5) ☐ other (specify):

☐ except defendant (name):

- (1) ☐ a business organization, form unknown
 (2) ☐ a corporation
 (3) ☐ an unincorporated entity (describe):
 (4) ☐ a public entity (describe):
 (5) ☐ other (specify):

* If this form is used as a cross-complaint, plaintiff means cross-complainant and defendant means cross-defendant.

SHORT TITLE:	CASE NUMBER:
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4. (Continued)

b. The true names of defendants sued as Does are unknown to plaintiff.

- (1) ☐ Doe defendants (specify Doe numbers): _____ were the agents or employees of the named defendants and acted within the scope of that agency or employment.
- (2) ☐ Doe defendants (specify Doe numbers): _____ are persons whose capacities are unknown to plaintiff.

c. ☐ Information about additional defendants who are not natural persons is contained in Attachment 4c.d. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):5. ☐ Plaintiff is required to comply with a claims statute, and

- a. ☐ has complied with applicable claims statutes, or
- b. ☐ is excused from complying because (specify):

6. ☐ This action is subject to ☐ Civil Code section 1812.10 ☐ Civil Code section 2984.4.

7. This court is the proper court because

- a. ☐ a defendant entered into the contract here.
- b. ☐ a defendant lived here when the contract was entered into.
- c. ☐ a defendant lives here now.
- d. ☐ the contract was to be performed here.
- e. ☐ a defendant is a corporation or unincorporated association and its principal place of business is here.
- f. ☐ real property that is the subject of this action is located here.
- g. ☐ other (specify):

8. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- ☐ Breach of Contract
- ☐ Common Counts
- ☐ Other (specify):

9. ☐ Other allegations:

10. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. ☒ damages of: \$ 5,000,000
- b. ☐ interest on the damages
- (1) ☒ according to proof
- (2) ☐ at the rate of (specify): _____ percent per year from (date):
- c. ☐ attorney's fees
- (1) ☐ of: \$
- (2) ☒ according to proof.
- d. ☐ other (specify):

11. ☐ The paragraphs of this pleading alleged on information and belief are as follows (specify paragraph numbers):

Date:

3-17-17

(TYPE OR PRINT NAME)

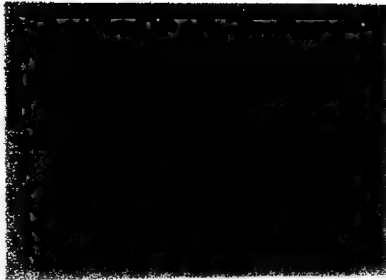
Cory S. Stone

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

Cory S. Stone

(If you wish to verify this pleading, affix a verification.)

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Exhibit

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN JOAQUIN

--o0o--

In the Matter of the
Application of

Case No. SC047798

CORY SCOTT STONE,
Petitioner,
for a Writ of Habeas Corpus.

PETITION FOR WRIT OF HABEAS CORPUS

OFFICE OF THE PUBLIC DEFENDER
FOR THE COUNTY OF SAN JOAQUIN
102 S. San Joaquin Street, Room 1
Stockton, California 95202
209-468-2730

GERALD L. GLEESON, Public Defender
LOIS KEENAN, Deputy Public Defender, State Bar No. 98131
Attorneys for Petitioner

1 LAW OFFICE OF THE PUBLIC DEFENDER
2 FOR THE COUNTY OF SAN JOAQUIN
3 102 S. San Joaquin Street, Room 1
4 Stockton, California 95202
5 (209) 468-2730

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8 Lois Keenan, State Bar No. 98131
9 Attorneys for Petitioner CORY SCOTT STONE
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN JOAQUIN

--oOo--

In the Matter of the
Application of

Case No. SC047798

CORY SCOTT STONE,

PETITION FOR WRIT OF
HABEAS CORPUS

Petitioner,

for a Writ of Habeas Corpus.

TO THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE
COUNTY OF SAN JOAQUIN:

CORY SCOTT STONE, Petitioner in the above-captioned matter,
alleges:

1. Petitioner, CORY SCOTT STONE, has suffered an illegal
restraint upon his liberty: he has been unjustly forced to
register as a sex offender pursuant to Penal Code section 290.

2. CORY SCOTT STONE was charged by Information No. 47798,
filed July 30, 1990, with two violations of Penal Code section

1 261(2) (forcible rape). (A true and correct copy of the
2 Information is attached hereto as Exhibit A.)

3 3. On September 11, 1990, Count 1 of Information No. 47798
4 was amended to reflect a violation of Penal Code section 242
5 (battery), a misdemeanor. Count 2 of the Information was
6 dismissed. Mr. STONE pled no contest to the amended charge:
7 Penal Code section 242. Imposition of sentence was suspended and
8 Mr. STONE was placed on informal probation for three years. The
9 court did not require Mr. STONE to register pursuant to Penal
10 Code section 290. (See Change of Plea transcript, a true and
11 correct copy of which is attached hereto as Exhibit B; see Minute
12 Order, dated September 11, 1990, a certified copy of which is
13 attached hereto as Exhibit C.)

14 4. On September 4, 1991, Information No. SC051153A was
15 filed in the San Joaquin County Superior Court, charging CORY
16 SCOTT STONE with a violation of Penal Code section 459
17 (burglary). On October 28, 1991, Mr. STONE pled no contest to
18 that charge. After placement with the Department of Corrections
19 for a diagnostic study, Mr. STONE was granted formal probation
20 for five years and was required to serve one year in the county
21 jail as a condition of probation. (See San Joaquin County
22 Criminal Justice Information System Printouts, attached hereto as
23 Exhibits D, E, F and G.)

24 5. Several violations of probation were subsequently filed
25 in Case No. SC051153A. On December 11, 1997, Mr. STONE was
26 sentenced to four years in state prison in Case No. SC051153A.
27 Mr. STONE was remanded to the custody of the Department of
28

1 Corrections. (See San Joaquin County Criminal Justice
2 Information System Printout, attached hereto as Exhibit H.)

3 6. Prior to Mr. STONE's release from the Department of
4 Corrections, officials at California State Prison, Solano,
5 unlawfully required Mr. STONE to sign a Notice of Registration
6 Requirement (Sex Offender Registration), based upon the September
7 11, 1990, conviction in San Joaquin County Superior Court Case
8 No. 47798. The form incorrectly lists the conviction as a
9 violation of Penal Code section 261(2). (See Notice of
10 Registration Requirement, a copy of which is attached hereto as
11 Exhibit I.)

12 7. Mr. STONE has been forced to register pursuant to Penal
13 Code section 290 to avoid arrest and prosecution. (See copies of
14 Registration Receipts, dated July 29, 1999, and January 18, 2000,
15 attached hereto as Exhibits J and K.)

16 8. The actions of the Department of Corrections in
17 requiring Mr. STONE to sign a Notice of Registration Requirement,
18 which triggered a requirement of registration pursuant to Penal
19 Code section 290, constitute an unlawful restraint upon Mr.
20 STONE's liberty.

21 9. Petitioner has no adequate remedy at law for the actions
22 of the Department of Corrections alleged herein. No other
23 petition for extraordinary relief has been sought regarding the
24 issues herein presented.

25 10. The attached Memorandum of Points and Authorities and
26 Exhibits A through K are incorporated herein by this reference.

1 WHEREFORE, petitioner prays as follows:

2 1. A writ of habeas corpus issue, ordering all relevant law
3 enforcement agencies to correct their records to reflect a
4 conviction for violation of Penal Code section 242 in San Joaquin
5 County Superior Court Case No. 47798; ordering all relevant law
6 enforcement agencies to delete from their records any requirement
7 that petitioner register pursuant to Penal Code section 290; and
8 ordering all relevant law enforcement agencies to seal and
9 destroy any and all records that reflect the fact that petitioner
10 has been required to register and/or has registered as a sex
11 offender; or

12 2. To issue an alternative writ, directing and requiring
13 the relevant agency or agencies to show cause before this court
14 at a specified time and place why the relief prayed for above
15 should not be granted; and

16 3. To grant any and all further relief that this court
17 deems proper and just.

18 Dated: March 10, 2000.

19 OFFICE OF THE PUBLIC DEFENDER

20 GERALD L. GLEESON, Public Defender

21
22 By Lois Keenan
23 Lois Keenan
24 Deputy Public Defender
25 Attorneys for Petitioner
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VERIFICATION

I, Lois Keenan, declare as follows:

1. I am an attorney admitted to practice before all courts of the State of California and am a Deputy Public Defender for the County of San Joaquin. I am the attorney of record for CORY SCOTT STONE, petitioner in the action filed herein.

2. I am making this declaration instead of Mr. STONE because the facts relating to the petition are as much within my knowledge as within Mr. STONE's.

3. All facts alleged in this petition are either supported by the submitted record or are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of March, 2000, at Stockton, California.



LOIS KEENAN

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POINTS AND AUTHORITIES

I

INTRODUCTION

Petitioner CORY SCOTT STONE brings this Petition for Writ of Habeas Corpus because he has been unlawfully forced to register as a sex offender pursuant to Penal Code section 290.

II

STATEMENT OF THE CASE AND FACTS

CORY SCOTT STONE was charged by Information No. 47798, filed July 30, 1990, in the San Joaquin County Superior Court with two violations of Penal Code section 261(2) (forcible rape). (See Exhibit A.) On September 11, 1990, Count 1 of Information No. 47798 was amended to reflect a violation of Penal Code section 242 (battery), a misdemeanor. Count 2 of the Information was dismissed. Mr. STONE pled no contest to the amended charge (Penal Code section 242). Imposition of sentence was suspended and Mr. STONE was placed on informal probation for three years. The court did not require Mr. STONE to register pursuant to Penal Code section 290. (See Exhibits B and C.)

On September 4, 1991, Information No. SC051153A was filed in the San Joaquin County Superior Court, charging CORY SCOTT STONE with a violation of Penal Code section 459 (burglary). On October 28, 1991, Mr. STONE pled no contest to that charge. After placement with the Department of Corrections for a diagnostic study, Mr. STONE was granted formal probation for five years and was required to serve one year in the county jail as a condition of probation. (See Exhibits D, E, F and G.)

1 Several violations of probation were subsequently filed in
2 Case No. SC051153A. On December 11, 1997, Mr. STONE was
3 sentenced to four years in state prison in Case No. SC051153A.
4 Mr. STONE was remanded to the custody of the Department of
5 Corrections. (See Exhibit H.)

6 Prior to Mr. STONE's release from the Department of
7 Corrections, officials at California State Prison, Solano,
8 unlawfully required Mr. STONE to sign a Notice of Registration
9 Requirement (Sex Offender Registration), based upon the September
10 11, 1990, conviction in San Joaquin County Superior Court Case
11 No. 47798. The form incorrectly lists the conviction as a
12 violation of Penal Code section 261(2). (See Exhibit I.)

13 Mr. STONE has been required to register pursuant to Penal
14 Code section 290 to avoid arrest and prosecution. (See Exhibits
15 J and K.)

16 III

17 LAW AND ARGUMENT

18 The Department of Corrections Cannot Unilaterally 19 Impose a Registration Requirement Upon Petitioner 20 When Neither Statutory Law Nor the Sentencing Court 21 Has Imposed a Registration Requirement

22 Cory Scott Stone entered a plea of no contest to a violation
23 of Penal Code section 242 in San Joaquin County Superior Court
24 Case No. 47798. Penal Code section 290 does not include
25 violations of Penal Code section 242 among the crimes that
26 trigger the sex offender registration requirement.

27 Although section 290 does give a court discretion to impose
28 a registration requirement for a crime not specifically listed as
a registration offense, the court must find at the time of

1 conviction or sentencing that the person committed the offense as
2 a result of sexual compulsion or for purposes of sexual
3 gratification. The court must state on the record the reasons
4 for its findings and the reasons for requiring registration.
5 (Pen. Code, § 290, subd. (a)(2)(E).)

6 When Judge Ferguson sentenced Mr. STONE, he did not require
7 Mr. STONE to register as a sex offender. Judge Ferguson did not
8 make any findings that Mr. STONE committed the battery as a
9 result of sexual compulsion or for purposes of sexual
10 gratification nor did he state any such findings on the record.
11 The statements that were made by Judge Ferguson on the record do
12 not even hint at any such findings.

13 The Department of Corrections cannot unilaterally impose a
14 registration requirement upon Mr. STONE. Such a requirement is
15 illegal and expressly violates the procedures established in
16 Penal Code section 290. Mr. STONE's liberty has been unjustly
17 restrained.

18 IV

19 CONCLUSION

20 For all the reasons stated above, petitioner CORY SCOTT
21 STONE hereby respectfully submits that the relief prayed for
22 above should be granted.

23 Dated: March 10, 2000.

24 OFFICE OF THE PUBLIC DEFENDER

25 GERALD L. GLEESON, Public Defender

26 By Lois Keenan

27 Lois Keenan
28 Deputy Public Defender
Attorneys for Petitioner

1 JOHN D. PHILLIPS
2 District Attorney
3 San Joaquin County
4 By: VICTORIA R. BOYETT
5 Deputy District Attorney
6 Courthouse
7 Stockton, CA 95202

8 Telephone: (209) 468-2400

9 Attorneys for Plaintiff

10 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

11 The People of the State of California,
12 Plaintiff,

13 v.

14 CORY SCOTT STONE aka CORY S. STONE

15 Defendant(s).)

FILED

1990 JUL 30 AM 10:48

RALPH W. EPPERSON, CLERK
BY JANICE P. FIORE
DEPUTY

No. 47798
INFORMATION

16 The said defendant(s) is/are accused by the District Attorney
17 of the County of San Joaquin of the State of California, by this
18 Information, of the following crime(s):

19 COUNT: 1, On or about June 30, 1990, defendant(s) did commit a
20 FELONY, namely, a violation of Section 261(2) of the California
21 Penal Code, FORCIBLE RAPE, in that the said defendant(s) did
22 wilfully, unlawfully have and accomplish an act of sexual inter-
23 course with a person, to-wit: VIRGINIA LEE C., not his spouse,
24 against said person's will by means of force and fear of imme-
25 diate and unlawful bodily injury on said person.

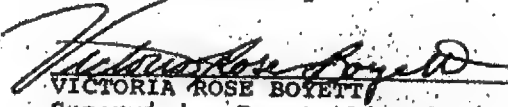
26 As further and separate causes of action, being different offen-
27 ses from, but connected in their commission with the charge set
28 forth above, it is alleged that the said defendant(s) committed
the following further crimes:

EXHIBIT A

1 COUNT: 2, On or about June 30, 1990, defendant(s) did commit a
2 FELONY, namely, a violation of Section 261(2) of the California
3 Penal Code, FORCIBLE RAPE, in that the said defendant(s) did
4 wilfully, unlawfully have and accomplish an act of sexual inter-
5 course with a person, to-wit: BIRGINIA LEE C., not his spouse,
6 against said person's will by means of force and fear of imme-
7 diate and unlawful bodily injury on said person.

8 Dated: July 23, 1990.
9

10
11 JOHN D. PHILLIPS
12 District Attorney

13 
14 VICTORIA ROSE BOZZETT
15 Supervising Deputy District Attorney
16 Child Abuse/Sexual Assault Unit
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COPY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

---o0o---

THE PEOPLE OF THE STATE
OF CALIFORNIA,

Plaintiff,

vs..

CORY SCOTT STONE,

Defendant.

No. 47798

Dept. 1

CHANGE OF PLEA

September 11, 1990

The above-entitled matter came on regularly
at the date and time above set forth, before the HON.
KENNETH FERGUSON, Judge of said Superior Court, for the
purpose of change of plea.

APPEARANCES OF COUNSEL:

LON R. HANSON, Deputy District Attorney,
County of San Joaquin, 222 East Weber Avenue, Room 202,
Stockton, California, 95202, appeared as counsel for and on
behalf of the People.

LOIS KEENAN, Deputy Public Defender, County
of San Joaquin, 102 S. San Joaquin Street, Room 401,
Stockton, California, 95202, appeared as counsel for and on
behalf of the defendant.

Reported by: RHONDA FIDELDY, C.S.R. No. 6091

EXHIBIT B

1 Do you waive formal arraignment?

2 MS. KEENAN: Yes, we do.

3 After consulting with Mr. Stone, he would like to enter
4 a plea of no contest to the charge of 242.

5 THE COURT: Mr. Stone, you have heard the
6 charges that have been made against you. You understand
7 what the nature of the charges is here? Battery?

8 You have to speak up so the Court Reporter can get it
9 down.

10 THE DEFENDANT: Yes.

11 THE COURT: You've discussed this matter
12 thoroughly with your attorney?

13 THE DEFENDANT: Yes.

14 THE COURT: And you're satisfied that that's
15 the appropriate thing to do is to plead no contest?

16 THE DEFENDANT: Yes.

17 THE COURT: You understand a plea of no
18 contest in this Court is exactly the same, for all purposes,
19 as a plea of guilty?

20 THE DEFENDANT: Yes.

21 THE COURT: So if, later on, if somebody asks
22 you if you've been convicted of a misdemeanor, you have
23 been. You understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: You understand that you have a
26 right to a public and speedy trial? And of course, this was
27 the date and time that we were going to call jurors up and
28 start the jury process, jury selection. And you'll be

1 waiving that constitutional right. You understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: You understand that you have the
4 assistance of your attorney, which you would, throughout the
5 trial and all post trial proceedings; and of course, you'll
6 have her assistance during these proceedings. You won't
7 have a trial, so you won't need those services. You don't
8 have to worry about not having an attorney. You would have
9 an attorney. You understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: You have a right to cross-examine
12 all witnesses called against you. You have a right to have
13 these witnesses cross-examined.

14 You have a right to the subpoena process of the court
15 to compel witnesses to come in and testify in your own
16 behalf. All your attorney has to do is ask the Court to
17 issue subpoenas, and that will be done, if you have any
18 witnesses you wanted to be called. You understand that?

19 THE DEFENDANT: (Nods affirmatively).

20 THE COURT: You have a right to present any
21 evidence on your own behalf.

22 You have the right, privilege against
23 self-incrimination. Which means, simply, that if you don't
24 want to testify, you don't have to. Nobody can require that
25 you do that.

26 And the jury or the Court, or whoever hears the case,
27 would not and cannot, under the law, assume that your not
28 taking the stand is some reason such as you probably are

1 guilty or something like that. That can't be taken into
2 consideration in determining your innocence or guilt. Do
3 you understand that?

4 THE DEFENDANT: (Nods affirmatively.).

5 THE COURT: Of course, you have a right to
6 take the stand. You understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: And if you wanted to, regardless
9 of what anybody says, you have a right to get up and tell
10 your side of the story as you see it.

11 THE DEFENDANT: Yeah.

12 THE COURT: Now, do you understand all these
13 rights?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: And you understand that if you
16 enter a plea of no contest, you waive each and every one of
17 those rights?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: Do you have any questions of this
20 Court as to -- about any of those rights?

21 THE DEFENDANT: No, I don't.

22 THE COURT: Okay. Keeping those rights in
23 mind then, what is your plea to having committed a battery
24 on or about June 30th, 1990? That's a violation of Section
25 242 of the Penal Code, that's battery, the victim being a
26 Birginia Lee C, not your wife. What is your plea?

27 THE DEFENDANT: No contest.

28 THE COURT: What is the factual basis?

1 MR. HANSON: Yes, Your Honor.

2 Early morning hours --

3 Your Honor, I would stipulate to a prelim transcript
4 that was completed in Department B of Municipal Court on
5 July 18th of 1990 in front of Judge Hammerstone.

6 THE COURT: Do you accept the stipulation?

7 Is there sufficient evidence to at least establish a
8 battery in that --

9 MS. KEENAN: To establish a battery, yes.

10 THE COURT: All right. The Court will accept
11 the stipulation. Find that the plea is free and voluntary.

12 And were any promises made to you? Any threats made to
13 you if you didn't plea? Anything like that? Were you
14 promised any particular sentence or any particular leniency?

15 THE DEFENDANT: No.

16 THE COURT: My understanding was there was
17 some arrangement made between the district attorney and your
18 attorney and yourself. Is that true?

19 THE DEFENDANT: Okay. I was promised to have
20 the charges amended to a 242.

21 THE COURT: Which we did.

22 THE DEFENDANT: Other than that, no.

23 THE COURT: How about sentencing?

24 THE DEFENDANT: Pardon me?

25 THE COURT: How about sentencing? Was there
26 some understanding on sentencing?

27 MR. HANSON: I don't believe so, Your Honor.

28 MS. KEENAN: I don't believe there was.

1 THE COURT: What is being requested?

2 MR. HANSON: I'd submit it, Your Honor.

3 MS. KEENAN: We would ask for straight
4 probation.

5 THE COURT: We talked about this case when it
6 was assigned yesterday to this department. And I suppose we
7 probably talked at least, say, probably a half an hour,
8 anyway. And because of the circumstances and --

9 Let's see, the victim is here?

10 Are you here, ma'am?

11 MR. HANSON: That's correct.

12 THE COURT: Are you interested in this young
13 man being sent to jail or anything like that?

14 MS. CASTENON: Your Honor, I'd just like for
15 him to -- it's up to you, Your Honor.

16 THE COURT: I understand that. But I want to
17 know how you feel about it?

18 MS. CASTENON: I'd like for him to pay for
19 assault and battery for charges that -- what he did to me.

20 THE COURT: I understand the two of you have
21 been friends for quite some time and --

22 MS. CASTENON: Either --

23 THE COURT: -- some question about even
24 wanting to get married?

25 MS. CASTENON: Well, maybe to be put on
26 probation, would be fine with me. No jail term.

27 THE COURT: The Court is going to --
28 You waive time for pronouncement of judgment?

1 MS. KEENAN: Yes.

2 THE COURT: You waive referral to the
3 probation department?

4 MS. KEENAN: Yes.

5 THE COURT: The Court is going to suspend the
6 pronouncement of judgment, place the defendant on informal
7 probation for a period of three years on the conditions that
8 he obeys all the laws --

9 Is there any need for restraining orders? I mean, if
10 they want to get together, it would be rather useless.

11 All right. That will be -- you understand that a
12 violation of the law would be grounds for violating your
13 probation. You understand that?

14 THE DEFENDANT: (Nods affirmatively).

15 THE COURT: Okay. Anything else?

16 MR. HANSON: I don't believe so, Your Honor.

17 THE COURT: Thank you.

18 MR. HANSON: Your Honor, I would move to
19 dismiss Count Two in the interest of justice in view of the
20 plea.

21 THE COURT: So ordered.

22 MR. HANSON: Thank you.

23

24 (Proceedings concluded.)

25 ----oOo----

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1 STATE OF CALIFORNIA)
2 COUNTY OF SAN JOAQUIN) ss.
3

4 I, RHONDA FIDELDY, Official Court Reporter,
5 of the Superior Court of the State of California, do hereby
6 certify:

7 That I was present in the Superior Court, County
8 of San Joaquin, State of California, at the hearing of the
9 above-entitled matter, that at said time and place, I took
10 down in shorthand notes all the testimony given and
11 proceedings had; that I thereafter caused said shorthand
12 notes to be transcribed into longhand typewriting by
13 computer-aided transcription, the above and foregoing being
14 a full, true and correct transcript of all testimony taken
15 and proceedings had.

16
17
18
19 Rhonda Fideldy
20 Official Court Reporter
21 C.S.R. No. 6091
22
23
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Judge _____
Clerk _____
Crt. Rptr. _____
Bailiff _____

TIME IN _____
TIME OUT _____

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

9-11-90

#1

Court met at Stockton, California

HON: KENNETH FERGUSON

Date

DON MORROW

Dept. No.

R. FIDELDY

JEAN SMITH

Judge

Bailiff

Reporter

Deputy Clerk

People of the State of California

vs.

Don Morrow

Counsel for People

☒ Felony

☒ Misdemeanor

COREY SCOTT STONE

B

Defendant

Rosa Keenan

DPD

Counsel for Defendant

Action No. 47798

MINUTE ORDER - NATURE OF PROCEEDINGS: JURY TRIAL

To Wit:

1. 242 PC
2. 242 PC

242 PC, MISA.

PEOPLE REPRESENTED AS ABOVE, AND

☒ DEFENDANT PRESENT WITH COUNSEL ☐ WITH INTERPRETER

Defendant not appearing ☐

Copy of Information _____ to defendant/counsel

Defendant states true name _____

☒ Reading of information waived. ☐ Information is read.

Court ☐ appoints ☐ relieves ☐ Public Defender ☐ Alternate Public Defender ☐ counsel through Lawyers Referral Service

Defendant withdraws plea of not guilty.

☒ Court informs defendant of ☒ legal/constitutional rights ☐ immigration conditions ☐ parole conditions ☐ appeal rights

☒ Defendant understands and waives legal/constitutional rights.

☒ Factual basis ☐ recited by counsel for people ☐ ☒ stipulated to by counsel based on contents of preliminary hearing transcript.

☒ On People's motion /P.C.17/ Information count(s) 1 amended to 242 PC ^{MISA} Battery

☒ Misdemeanor

☒ Defendant pleads ☐ GUILTY ☒ NOLO CONTENDERE as charged in count(s)/all counts 1 as amended.

☐ to lesser included offense(s) of _____ ☐ on Amended Information

Defendant pleads NOT GUILTY to count(s)/all count(s) _____ ☐ NOT GUILTY by reason of insanity _____

Defendant ☐ admits ☐ denies _____ enhancement(s).

Court fixes degree of the offense as ☐ First ☐ Second

☒ People move to dismiss count(s) 2 ☒ Motion granted.

People move to strike enhancement(s) _____ ☐ Motion granted.

Proceedings are/have been heretofore suspended pursuant to ☐ 1368 PC ☐ 1026 PC ☐ 1370 PC ☐ 3051 W & I

Court appoints Drs. _____ to examine the defendant per _____

Defendant ☐ waives time ☐ does NOT waive time ☐ procedural defects ☐ executes waiver of personal appearance in Open Court.

☒ Defendant ☐ referred to P.O. for ☒ waives referral to P.O. for Report ☐ Presentence ☐ Pre Plea ☐ Supplemental ☐ Defendant referred to Pre Trial Services for report.

☐ Defendant to report to Probation Office on _____

☐ Motion(s) _____ ☐ Granted ☐ Denied

☐ Trial Date _____ is vacated

☐ PTC ☐ Trial Setting ☐ P & J ☐ Doctors reports ☐ Motion Setting ☐ Motions ☐ _____ is set for/continued to _____

☐ Jury Trial date is set for/remains _____ ☐ Readiness Conference is set for/remains _____

Defendant remanded back to _____ for further hearing on _____

Defendant remanded to the custody of ☐ Sheriff ☐ DVI ☐ SSH/SDC ☐ County Mental Health Facility ☐ JJC

Defendant permitted to remain on: ☐ liberty ☐ own recognizance ☐ bail posted ☐ Probation

Bail is fixed in the amount of \$ _____ ☐ No Bail ☐ O.R. Agreement signed this day.

☒ Bail Bond No. R010-00 1400 in the amount of \$ 10,000 is ☒ forfeited ☒ exonerated ☐ reinstated

☐ Bail reduced to \$ _____

The Sheriff of San Joaquin County is hereby ordered to deliver the Defendant to ☐ Department of Corrections ☐ Reception-Guidance Center at _____ ☐ California Instruction for Women at _____

☐ A place and time as directed by the California Youth Authority

DATED: _____

D.O.B. _____

cc ☒ PO ☐ Jail ☐ Acc. Clerk ☐ Pre-Trial Serv.

☐ CONTINUED ON REVERSE

EXHIBIT C

JUDGE OF THE SUPERIOR COURT

SAN JOAQUIN

DISPLAY COURT CASE EVENTS

03/09/00

C J I S

15:59

MORE DATA PENDING

PAGE 1

CASE: SC051153 A DEF: STONE, CORY SCOTT

EVENT CODE:

START DATE:

SEQUENCE: NORMAL

DATE	SEQ CODE	EVENT DESCRIPTION
08/29/91	005 HHOC	OUT OF COURT ENTRIES BY CLERK: LS AT 11:30 A.M.
	010 FDPTA	PRE-TRIAL SERVICE REPORT, COMPLAINT AND FELONY MINUTES HELD TO ANSWER.
09/04/91	005 HHOC	OUT OF COURT ENTRIES BY CLERK: LS AT 4:49 P.M.
	010 FDJNF	INFORMATION FILED

MORE DATA PENDING

PAGE 5

CASE: SC051153 A DEF: STONE, CORY SCOTT

EVENT CODE:

START DATE:

SEQUENCE: NORMAL

0/28/91 005 HHLD CASE CALLED ON 10/28/91 AT 8:15 A.M. IN SAN JOAQUIN CO.
SUPERIOR COURT, DEPT. 5. HON. STEPHEN G DEMETRAS, JUDGE
, PRESIDING. CLERK: COLLEEN MANWARING. REPORTER:
EMELIA ROBLES.

010 HHJA NATURE OF PROCEEDINGS: JURY TRIAL ASSIGNMENT.

015 APDAT DEPUTY DISTRICT ATTORNEY: KEVIN MAYO.

020 PAPRD PUBLIC DEFENDER JOHN LAUPER PRESENT TO REPRESENT
DEFENDANT.

025 APDAA PEOPLE REPRESENTED AS ABOVE AND DEFENDANT IS PRESENT
WITH COUNSEL.

030 RAAPC DEFENDANT IS ADVISED OF PAROLE CONSEQUENCES.

035 PLEFV THE COURT FINDS THAT THE PLEA IS FREE AND VOLUNTARY.

0/28/91 040 WRMTC DEFENDANT ADVISED OF, UNDERSTOOD, AND KNOWINGLY AND
VOLUNTARILY WAIVED ALL THE FOLLOWING RIGHTS: THE
PRIVILEGE AGAINST SELF-INCRIMINATION, THE RIGHT TO A
JURY TRIAL, AND THE RIGHT TO CONFRONT AND CROSS-EXAM
WITNESSES AGAINST HIM. AFTER QUESTIONING THE DEFENDANT
THE COURT DETERMINED THAT THE DEFENDANT UNDERSTOOD THE
NATURE OF THE CHARGE, THE ELEMENTS OF THE OFFENSE, THE
PLEAS AVAILABLE THERETO, THE POSSIBLE DEFENSES THERETO,
THE POSSIBLE RANGE OF PENALTIES AND OTHER CONSEQUENCES
OF DEFENDANT'S PLEA (INCLUDING THE EFFECT OF THE
ADMISSION OF ANY PRIOR CONVICTION).

045 PLFRD COURT FINDS A FACTUAL BASIS FOR THE PLEA BASED ON
STIPULATION BY COUNSEL BASED ON THE PRELIMINARY
TRANSCRIPT.

050 PLWNG DEFENDANT REQUESTS AND IS GRANTED PERMISSION TO WITHDRAW

0/28/91 050 PLEA OF NOT GUILTY AND ENTERS A PLEA OF:

055 PLNB1 NOLO CONTENDERE TO COUNT 1, VIOLATION OF PC 459(F3, A
FELONY.

060 PRRPA DEFENDANT REFERRED TO PROBATION DEPARTMENT FOR REPORT
NOTIFY PROBATION DEPARTMENT RE: PRE-SENTENCE REPORT.

065 PRCIS DEFENDANT TO BE INTERVIEWED AT THE COUNTY JAIL BY
PROBATION OFFICER.

070 SHPJH P & J SET ON 11/26/1991 AT 8:15 A.M. IN SAN JOAQUIN CO.
SUPERIOR COURT, DEPT. 5.

075 CSFRA DEFENDANT IS REMANDED.

080 MROOC ENTERED IN CJIS BY AJP DATE 10/29/1991.

085 MICCF COPY SENT TO PROBATION THIS DATE.

MORE DATA PENDING

PAGE 15

CASE: SC051153 A DEF: STONE, CORY SCOTT

EVENT CODE:

START DATE:

SEQUENCE: NORMAL

DATE	SEQ CODE	EVENT DESCRIPTION
01/07/92	005 HHLD	CASE CALLED ON 01/07/92 AT 8:15 A.M. IN SAN JOAQUIN CO. SUPERIOR COURT, DEPT. 5. HON. STEPHEN G DEMETRAS, JUDGE, PRESIDING. CLERK: CYNTHIA TEICHEIRA. REPORTER: ABBY HUERTA.
	010 HHPJH	NATURE OF PROCEEDINGS: P & J.
	015 APDAT	DEPUTY DISTRICT ATTORNEY: JOHN CALABRACE.
	020 APPUD	DEPUTY PUBLIC DEFENDER: DAVID ATKINSON.
01/07/92	025 APDAA	PEOPLE REPRESENTED AS ABOVE AND DEFENDANT IS PRESENT WITH COUNSEL.
	030 MIRPA	REPORT OF PROBATION OFFICER IS RECEIVED AND CONSIDERED.
	035 PSSPB	CRIMINAL PROCEEDINGS ARE SUSPENDED PURSUANT TO PC 1203.03.
	040 SEADF	DEFENDANT PLACED IN DEPARTMENT OF CORRECTIONS DIAGNOSTIC FACILITY FOR A PERIOD NOT TO EXCEED 90 DAYS PURSUANT TO PC 1203.03.
	041 CSDTE	SHERIFF TO DELIVER DEFENDANT INTO CUSTODY OF THE DIRECTOR OF CALIFORNIA MEDICAL FACILITY AT VACAVILLE.
	045 CSFRA	DEFENDANT IS REMANDED.
	050 MIEOC	ENTERED IN CJIS BY CYNTHIA DATE 01/08/1992.
	055 NJCC5	CC: --- DEPT. OF CORRECTIONS DIAGNOSTIC FACILITY.

MORE DATA PENDING

PAGE 14

CASE: SC051153 A DEF: STONE, CORY SCOTT 4

EVENT CODE:

START DATE:

SEQUENCE: NORMAL

DATE	SEQ CODE	EVENT DESCRIPTION
04/28/92	005 HHED	CASE CALLED ON 04/28/92 AT 8:15 A.M. IN SAN JOAQUIN CO. SUPERIOR COURT, DEPT. 11. HON. STEPHEN G. DEMETRAS, JUDGE, PRESIDING. CLERK: CYNTHIA TEICHEIRA. REPORTER: EMELIA ROBLES.
	010 HHPJH	NATURE OF PROCEEDINGS: P & J.
	015 APDAT	DEPUTY DISTRICT ATTORNEY: RUSSEL BAUGH.
04/28/92	020 APDEF	ATTORNEY: DAVID ATKINSON.
	025 APDAA	PEOPLE REPRESENTED AS ABOVE AND DEFENDANT IS PRESENT WITH COUNSEL.
	030 MIRPA	REPORT OF PROBATION OFFICER IS RECEIVED AND CONSIDERED.
	035 MIRPF	REPORT OF DIAGNOSTIC STUDY IS RECEIVED AND CONSIDERED.
	040 MINLC	DEFENDANT STATES THERE IS NO LEGAL CAUSE WHY JUDGMENT SHOULD NOT BE PRONOUNCED.
	045 WRWFA	DEFENDANT WAIVES FORMAL ARRAIGNMENT.
	050 TCPCF	IMPOSITION OF SENTENCE IS SUSPENDED FOR THE PURPOSE OF GRANTING PROBATION.
	055 TCPGC	FORMAL PROBATION IS GRANTED TO DEFENDANT FOR A PERIOD OF 5 YEAR(S) UNDER THE FOLLOWING TERMS AND CONDITIONS.
	060 TCJTC	DEFENDANT TO SERVE 365 DAY(S) IN CUSTODY IN COUNTY JAIL.
	065 TCCTA	DEFENDANT TO RECEIVE CREDIT FOR TIME SERVED: 265 DAYS.
04/28/92	070 TCV2F	DEFENDANT TO SUBMIT VOLUNTARILY TO A SEARCH OF HIS/HER PERSON, VEHICLE OR RESIDENCE AT THE REQUEST OF ANY PEACE OFFICER OR PROBATION OFFICER, DAY OR NIGHT, WITHOUT THE NECESSITY OF A SEARCH WARRANT, WITHOUT PROBABLE CAUSE, FOR NOT LIMITED.
	075 TCPA7	MAKE RESTITUTION IN AN AMOUNT TO BE ESTABLISHED BY THE COURT AFTER RECOMMENDATION BY THE PROBATION OFFICER WITHIN 60 DAYS, PAYABLE TO THE PROBATION OFFICER, MANNER OF PAYMENT MAY BE DETERMINED BY THE PROBATION OFFICER.
	080 TCBAC	DEFENDANT TO SUBMIT TO A BLOOD, BREATH OR URINE TEST AT THE REQUEST OF ANY PEACE OFFICER OR PROBATION OFFICER TO DETERMINE BLOOD ALCOHOL CONTENT AND DRUG DETECTION.
	085 TCRPP	DEFENDANT TO REPORT TO THE PROBATION OFFICER WITHIN 10 DAYS OF RELEASE FROM CUSTODY.
	090 TCRPU	DEFENDANT TO APPEAR BEFORE THE PROBATION OFFICER TO DETERMINE ABILITY TO PAY THE COST OF PROBATION
04/28/92	090	INVESTIGATION AND SUPERVISION, INCLUDING SUBSTANCE ABUSE TESTING AND ANY APPROPRIATE COURT ADMINISTRATION FEES.
	095 TCOGP	ORDER GRANTING PROBATION AND TERMS OF PROBATION SIGNED IN COURT. SEE ORDER SIGNED THIS DAY.
	100 MIASE	ALL SENTENCE ELEMENTS FOR THIS PROCEEDING ENTERED.
	105 CSFRA	DEFENDANT IS REMANDED.
	110 MIEOC	ENTERED IN CJIS BY CYNTHIA DATE 04/29/1992.
	115 MICE1	CC: --- P.O.
	120 MICE2	CC: --- JAIL
04/30/92	005 HHOC	OUT OF COURT ENTRIES BY CLERK: CRT AT 10:47 A.M.
	010 FDGFP	ORDER GRANTING FORMAL PROBATION FILED
05/05/92	005 HHOC	OUT OF COURT ENTRIES BY CLERK: NM AT 9:37 A.M.
	010 FDRJS	REPORT - INDETERMINATE SENTENCE, OTHER SENTENCE CHOICE FILED.

MORE DATA PENDING

PAGE 1

TASK: SC051153 A DEF: STONE, CORY SCOTT

EVENT CODE:

START DATE:

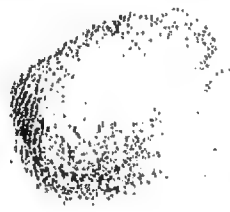

SEQUENCE: REVERSE

DATE	SEQ CODE	EVENT DESCRIPTION
12/12/97	005	NH00C OUT OF COURT ENTRIES BY CLERK: CRT AT 2:22 P.M.
	010	FDA0J ABSTRACT OF JUDGMENT FILED.
12/11/97	005	HHELD CASE CALLED ON 12/11/97 AT 8:30 A.M. IN SAN JOAQUIN CO. SUPERIOR COURT, DEPT. 12. HON. TERRENCE R VAN OSS, JUDGE, PRESIDING. CLERK: RITA SEPULVEDA. REPORTER: ROSEANNE CASTELLANOS.
	010	HHEVP NATURE OF PROCEEDINGS: SENTENCING ON VIOLATION OF PROBATION.
	015	APDAT DEPUTY DISTRICT ATTORNEY: CHERYL JACOBSEN.
	020	APDEF ATTORNEY: MARVIN MARKS.
	025	APDAA PEOPLE REPRESENTED AS ABOVE AND DEFENDANT IS PRESENT WITH COUNSEL.
	030	RALEG THE COURT INFORMS DEFENDANT OF LEGAL AND CONSTITUTIONAL RIGHTS.
	035	WHWFH DEFENDANT WAIVES FORMAL HEARING.
12/11/97	040	PLVAA DEFENDANT ADMITS VIOLATION OF PROBATION.
	045	PROBA PROBATION IS DENIED.
	050	TCTI2 AS TO COUNT 1: IMPOSED THE MIDDLE TERM OF 4 YEAR(S), 0 MONTH(S), 0 DAY(S).
	055	TCTCR CREDIT FOR TIME SERVED: LOCAL 396 PLUS 196 (GOOD TIME/WORK CREDIT) PLUS 0 CRC/CDC PLUS 0 (GOOD TIME/WORK/CREDIT) - TOTAL 594 DAYS.
	060	TCTJY DEFENDANT TO SERVE TOTAL PRISON OF 4 YEARS, 0 MONTHS.
	065	TCPRF DEFENDANT TO PAY \$800.00 RESTITUTION FINE.
	070	TCOTH RESTITUTION TO BE COLLECTED BY CDC
	075	OTHER DEFENDANT ADVISED AS TO PAROLE RIGHTS
	080	CSFRB DEFENDANT IS REMANDED TO THE CUSTODY OF THE DEPT. OF CORRECTIONS.
	085	CSDTA SHERIFF TO DELIVER DEFENDANT INTO CUSTODY OF THE DIRECTOR OF CALIFORNIA DEPARTMENT OF CORRECTIONS,
12/11/97	085	RECEPTION GUIDANCE CENTER AT DVI.
	090	MIEOC ENTERED IN CJIS BY RS DATE 12/11/1997.
	095	MICC2 CC: --- JAIL
	100	MJAVE ALL VOD OR VOP ELEMENTS FOR THIS PROCEEDING HAVE BEEN ENTERED.
	105	MIDTE MODIFIED JAIL SENTENCE REMITTED BY DATE.

DIVISION OF LAW ENFORCEMENT
REGISTRATION UNIT
P.O. Box 903387, Sacramento, CA 94203-3870
NOTICE OF REGISTRATION REQUIREMENT
290 P.C. — 457.1 P.C. — 11590 H&S

Please print or type required information

(This is not the Registration Form)

PERSONAL HISTORY INFORMATION	FULL NAME OF PERSON NOTIFIED							
	Last		First		Middle			
	STONE		CORY		SCOTT			
CONVICTION INFORMATION	DATE OF BIRTH	SEX	RACE	HEIGHT	WEIGHT	EYES	HAIR	SOCIAL SECURITY NUMBER
	01-20-69	M	OTH	5'09	120	BRN	BRN	[REDACTED]
	DRIVER'S LICENSE NUMBER A3235566		CII NUMBER A08605629		FBI NUMBER 609754HA5		INSTITUTION NUMBER K77795	
RELEASE INFORMATION	ARRESTING AGENCY 50 STOCKTON		DATE OF ARREST 07-03-90		PROSECUTING AGENCY SAN JOAQUIN DA		PROSECUTING COURT & CASE NUMBER 47798	
	REGISTRABLE CONVICTION PC 261 (2)	MISC. FEL.	DATE OF CONVICTION 09-11-90		DATE OF SCHEDULED DISCHARGE OR RELEASE 03-08-99 4/20/99		DATE PAROLE OR PROBATION EXPIRES 03-08-2002	
	ADDRESS WHERE PERSON NOTIFIED EXPECTS TO RESIDE UPON DISCHARGE, PAROLE, OR RELEASE (Full street address, city, and zip code) 2428 FRESNO AVE., STOCKTON, CA 95206							
NOTIFICATION STATEMENT	NAME OF AGENCY SUPERVISING PAROLE OR PROBATION STOCKTON #2 PAROLE UNIT				NAME OF SUPERVISING PAROLE OR PROBATION OFFICER OFFICER OF THE DAY			
	ADDRESS 125 BRIDGE PLACE, STOCKTON, CA 95202						TELEPHONE NUMBER (209) 948-7652	
	<p style="text-align: center;">SEX OFFENDER REGISTRATION - (290 P.C.)</p> <p>I have been notified of my duty to register as a convicted sex offender pursuant to Section 290 of the California Penal Code. I understand that:</p> <ul style="list-style-type: none"> • My responsibility to register as a sex offender is a lifetime requirement. • I must register within 5 working days of coming into any city, county, or city and county in which I am domiciled with the law enforcement agency having jurisdiction over my place of residence. • I must upon changing my residence, inform in writing within 5 working days the law enforcement agency with which I last registered. • I must annually, within 5 working days of my birthdate, go to the law enforcement agency having jurisdiction over my place of residence and update my registration, name and vehicle information. • I must disclose I am a registered sex offender to the licensee of a community care facility before becoming a client of that facility. • Within 5 days of changing my name, I must notify the law enforcement agency having jurisdiction over my place of residence. <p style="text-align: center;">[Signature] 9-10-98</p> <p>SIGNATURE OF PERSON NOTIFIED _____ DATE _____</p>							
STATEMENT OF NOTIFYING OFFICER	<p style="text-align: center;">ARSON OFFENDER REGISTRATION - (457.1 P.C.)</p> <p>I have been notified of my duty to register as a convicted arson offender pursuant to Section 457.1 of the California Penal Code. I understand that:</p> <ul style="list-style-type: none"> • My responsibility to register as an arson offender is a lifetime requirement. • I must register within 30 days of coming into any city, county, or city and county in which I am domiciled with the law enforcement agency having jurisdiction over my place of residence. • I must upon changing my residence, inform in writing within 10 days the law enforcement agency with which I last registered. <p style="text-align: center;">[Signature] _____</p> <p>SIGNATURE OF PERSON NOTIFIED _____ DATE _____</p>						<p>Roller Right Thumbprint of Person Notified — if amputated, use next available finger.</p> 	
	<p style="text-align: center;">NARCOTICS OFFENDER REGISTRATION - (11590 H&S)</p> <p>I have been notified of my duty to register as a convicted narcotics offender pursuant to Section 11590 of the Health and Safety Code. I understand that:</p> <ul style="list-style-type: none"> • My responsibility to register as a narcotics offender shall terminate 5 years after my discharge from prison, release from jail, or expiration of parole or probation. • I must register within 30 days of coming into any city, county, or city and county in which I am domiciled with the law enforcement agency having jurisdiction over my place of residence. • I must upon changing my residence, inform in writing within 10 days the law enforcement agency with which I last registered. <p style="text-align: center;">[Signature] _____</p> <p>SIGNATURE OF PERSON NOTIFIED _____ DATE _____</p>						<p>Roller Right Thumbprint of Person Notified — if amputated, use next available finger.</p> 	
	<p>NOTIFYING AGENCY _____ ADDRESS _____</p> <p>CSP SOLANO PO BOX 4000, VACAVILLE, CA 95696</p> <p>TELEPHONE NUMBER (707) 451-0182</p> <p>I certify that I notified the individual described above of his or her duty to register under provisions of the applicable statute.</p> <p style="text-align: center;">[Signature] 9-10-98</p> <p>SIGNATURE OF NOTIFYING OFFICER _____ DATE OF NOTIFICATION _____</p> <p>NAME AND TITLE OF NOTIFYING OFFICER (Please print or type)</p>							

DISTRIBUTION: First Copy to DOJ; Second Copy to Law Enforcement Agency having jurisdiction over address; Third Copy to Notifying Officer (Pink); Fourth Copy to Person Notified (White); Fifth Copy to Prosecuting Agency (Blue)

EXHIBIT I

OSP 96 89999



CITY OF STOCKTON

POLICE DEPARTMENT
22 EAST MARKET STREET
STOCKTON, CA 95202

PERMANENT REGISTRATION RECEIPT

Pursuant to your registration with this office and in compliance with 11590 of the Health and Safety Code, we are hereby attaching your permanent registration receipt. Keep it on your person at all times as proof of your compliance.

Any change of address must be reported to this Department within ten (10) days of the change. In addition, should you move from this Department's jurisdiction (the City of Stockton) you must also re-register with the authorities having jurisdiction for the new address within thirty (30) days. Failure to do so is a violation of the law and a warrant will be issued for your arrest.

Thank you for your cooperation in this matter.

EDWARD J. CHAVEZ
CHIEF OF POLICE


CAPTAIN DAVID B. COLE
SUPPORT SERVICES DIVISION

EJC:DBC:cn

(209) 937-8529

REGISTRATION RECEIPT

☐ TEMPORARY REGISTRATION RECEIPT (Expires 10 days from date)

☒ PERMANENT REGISTRATION RECEIPT

☒ Penal Code Section 290

CH Number A08605

☐ Penal Code Section 457.1

OLN A323556

☐ Health and Safety Code Section 11590

Name of Registrant

CORY STONE

Date of Birth

1-20-1

Residence Address

2428 S. FRESNO AVE. 95206

Name of Registering Agency

Stockton Police Department #170500

Right Thumb Print

Date of Annual Update

Date of Registration

DUL 29

Signature of Registering Officer / Badge Number

C. [Signature] #454


Signature of Registrant

X CORY S. STONE

EXHIBIT J

"STOCKTON...CALIFORNIA"

89-9021 Rev. 1/99

REGISTRATION RECEIPT		
<input checked="" type="checkbox"/> TEMPORARY REGISTRATION RECEIPT (Expires 10 days from date) <input type="checkbox"/> PERMANENT REGISTRATION RECEIPT		
<input checked="" type="checkbox"/> Penal Code Section 290 <input type="checkbox"/> Penal Code Section 457.1 <input type="checkbox"/> Health and Safety Code Section 11590	CII Number <u>A0860572</u> OLN <u>A3235566</u>	
Name of Registrant	Date of Birth	
<u>CORY STONE</u>	<u>1-20-69</u>	
Residence Address		
<u>2428 S FRESNO</u>	<u>95206</u>	
Name of Registering Agency		
<u>Stockton Police Department</u>	<u># 170500</u>	
	Date of Annual Update	Date of Registration
	<u>1-18-00</u>	<u>JAN 18 2000</u>
	Signature of Registering Officer / Badge Number	
	<u>C. Marquez # 4543</u>	
	Signature of Registrant	
	<u>Cory S. Stone</u>	

Charles Tony Piccuta (258333)
Charles Albert Piccuta (56010)
PICCUTA LAW GROUP, LLP
400 West Franklin Street
Monterey, CA 93940
Telephone: (831) 920-3111
Facsimile: (831) 920-3112
charles@piccutalaw.com
chuck@piccutalaw.com

Attorneys for Plaintiff
Trinidad Brown

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TRINIDAD BROWN,	)	Case No.:
)	
Plaintiff,	)	Complaint Seeking Redress for Violation of
	)	Civil Rights Pursuant to 42 U.S.C. § 1983
v.)	
	)	PLAINTIFF DEMANDS A TRIAL BY JURY
EDDIE DIAZ, ERIC HOWARD, LAERTIS)	
MORAITIS and DANIEL VILLALOBOS,)	
)	
Defendants.)	
)	
)	

Plaintiff, Trinidad Brown ("Plaintiff"), alleges as follows:

INTRODUCTION

1. This action arises from an unlawful arrest of Plaintiff on June 3, 2015, by police officers employed by the City of Stockton (hereinafter "City") and a subsequent malicious criminal prosecution of Plaintiff. Plaintiff is suing the Defendants in their individual capacities and demands a trial by jury.

2. On June 3, 2015, acting under color of law and within the scope of his employment, Defendant Eric Howard, subjected Plaintiff to unreasonable force in violation of his rights arising under the Fourth Amendment of the United States Constitution. The use of excessive and unreasonable force by Defendant Eric Howard rendered Plaintiff's arrest unlawful.

3. Following the aforementioned false arrest, Defendants, acting under color of law and within the scope of their employment, knowingly caused false criminal charges to be filed against Plaintiff hoping to insulate Defendant Howard from civil liability and to block and deter Plaintiff from exercising his Constitutional right to seek redress.

JURISDICTION AND VENUE

4. This court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331 and 1343.

5. The acts and omissions giving rise to Plaintiff's claims occurred within the territorial limits of the County of San Joaquin. Therefore, the appropriate venue for this action is in the United States District Court for the Eastern District of California located in Sacramento.

STATEMENT OF FACTS

6. At approximately 12:20 AM on June 3, 2015, Defendants Officer Daniel Villalobos (“Villalobos”) and Officer Laertis Moraitis (“Moraitis”) were on patrol. The two officers initiated a traffic stop of Plaintiff claiming that he had made an unsafe lane change while operating his sport utility vehicle. After pulling Plaintiff over, Villalobos parked the patrol car at angle to the curb and behind Plaintiff’s vehicle. Both Moraitis and Villalobos got out of the patrol car and eventually talked with Plaintiff while he was sitting in the driver’s seat of his vehicle.

7. Moraitis got out of the patrol car first. Moraitis stationed himself in a “cover” position on the passenger side of Plaintiff’s vehicle. He stood approximately even with the rear door on that side but far enough away from Plaintiff’s vehicle to allow him to keep Plaintiff under surveillance.

8. Villalobos walked up to the driver's side window, which was open halfway, and asked Plaintiff for his driver's license, registration and proof of insurance. Plaintiff gave Villalobos his driver's license. Plaintiff told Villalobos he had the other items but he couldn't find them because his SUV was "junky", i.e., too much personal property. Villalobos told

1 Plaintiff to look for the registration and proof of insurance. Villalobos further told Plaintiff that
2 if the records check was clean, he intended to give Plaintiff a warning not a citation. Leaving
3 Plaintiff to look for the registration and proof of insurance, Villalobos returned to the patrol car
4 to "run" a records check on Plaintiff based on the information provided by his driver's license.
5 Moraitis remained in his cover position.
6

7 9. Villalobos returned to his patrol car to use the on board computer to run
8 Plaintiff's license. Meanwhile Plaintiff began rummaging through his personal property
9 looking for the registration and proof of insurance. Plaintiff also rolled down the front passenger
10 window and turned toward that side of Plaintiff's vehicle and asked Moraitis why they had
11 pulled him over.
12

13 10. At or about this same time, Defendants Officer Eddie Diaz ("Diaz") and Eric
14 Howard ("Howard") arrived in another patrol car. They parked behind the patrol car Villalobos
15 was in.
16

17 11. Upon arriving, Howard immediately got out of the patrol car and walked up
18 behind and close to Moraitis. Less than 30 seconds later and without discussing the details of
19 the situation with either Moraitis or Villalobos, Howard removed his sidearm from its holster
20 and made his way around the back end of Plaintiff's vehicle and up to the driver's door.
21 Intending, one way or another, to get Plaintiff out of the vehicle, Howard grabbed and pulled
22 the handle of the driver's door and tried to open it. The door was locked.
23

24 12. Hearing Howard's effort to open the door, Plaintiff, who was still facing the
25 passenger side, turned back around toward the driver's side of his vehicle. At that moment
26 Howard stuck his gun over the top of the halfway open window. Holding the muzzle inches
27 from Plaintiff's forehead, Howard told Plaintiff to get out of the vehicle because he was under
28 arrest. Plaintiff nervously told Howard he was not going to get out of his vehicle with a gun in
his face. Howard withdrew his gun.

1 13. Plaintiff's vehicle was equipped with electric windows. The driver's side
2 window is fitted with an automatic switch. Once the automatic switch is activated the window
3 opens or closes without further assistance. Immediately after Howard withdrew his gun,
4 Plaintiff, fearing for his safety, activated the switch to roll up the window. As the window was
5 closing, Howard quickly pulled out his taser and stuck it over the top of the closing window.
6

7 14. With his hand and the taser now just on the other side of the driver's window
8 glass, Howard told Plaintiff if he didn't get out of the vehicle, he would tase him in his face. A
9 split second later, as Plaintiff turned away toward the center console of the front passenger seat,
10 Howard fired his taser. Two darts struck Plaintiff.

11 15. Shortly after being tased, Plaintiff unlocked the front passenger door. He fell to
12 the floor and urinated on himself. Defendants Diaz and Moraitis dragged Plaintiff out of the
13 SUV through the passenger side front door. They made fun of his incontinence as they hand-
14 cuffed him. Because he was unable to walk Diaz and Moraitis dragged him back to the patrol car
15 Howard and Diaz had arrived in. They threw Plaintiff into the back seat.
16

17 16. Because Plaintiff had been tased, Diaz and Howard took him to the hospital for
18 examination and removal of the taser darts. Diaz and Howard then transported Plaintiff to the
19 County Jail for booking. Plaintiff was falsely arrested for resisting arrest.
20

21 17. Plaintiff was charged with a violation of Penal Code section 148, subdivision (a)
22 (1), resisting a peace officer. In June 2016, following a trial by jury, Plaintiff was found not
23 guilty.

24 **First Cause of Action**

25 **Violation of Civil Rights - 42 U.S.C. 1983**

26 **(Against EDDIE DIAZ, ERIC HOWARD and LAERTIS MORAITIS)**

27 **(Unlawful Arrest, Search and Seizure/Unreasonable Use of Excessive Force)**
28

1 18. Plaintiff re-alleges and incorporates herein by this reference thereto all the
2 allegations in paragraphs 1 - 17 as set forth above as if the same were repeated verbatim
3 herewith.

4 19. At all relevant times herein described, the conduct of defendants Diaz, Howard
5 and Moraitis was subject to 42 U.S. C. §1983. At all relevant times herein described, Plaintiff
6 had the right to be secure in his person and effects against unreasonable searches and seizures,
7 and unreasonable use of force via the Fourth and Fourteenth Amendments of the United States
8 Constitution. The force applied by Howard was excessive, unnecessary and unreasonable under
9 the totality of the circumstances.

10 20. Acting under color of law, authority, customs and usage, defendants Diaz,
11 Howard and Moraitis deprived Plaintiff of his rights, privileges, and immunities as guaranteed by
12 the Fourth and Fourteenth Amendments of the Constitution of the United States, via their
13 conduct described herein above.

14 21. Defendants Diaz, Howard and Moraitis acted intentionally and their malfeasance
15 and wrongful arrest and imprisonment of Plaintiff was a substantial factor in causing him the
16 harm hereinafter alleged.

17 22. The conduct of defendants Diaz, Howard and Moraitis was outrageous,
18 despicable, malicious, oppressive and done with a reckless disregard of the effect that it would
19 have and did have on Plaintiff.

20
21
22
23 **Second Cause of Action**

24 **Malicious Prosecution in Derogation of Plaintiff's Constitutional Rights Under the**
25 **U.S. Constitution**
26 **(Against All Defendants)**

27 23. Plaintiff realleges and incorporates by reference paragraphs 1 through 17 of this
28 Complaint.

1 24. At all relevant times herein, Defendants were sworn peace officers of the City
2 and acted within the scope of their authority and pursuant to their duties as peace officers for the
3 City. Defendants knowingly caused false criminal charges to be filed against Plaintiff, as part of
4 their pattern of abusing their authority.

5 25. Between June 3, 2015 to on or about June 6, 2016, Defendants maliciously
6 initiated, sought, maintained, encouraged and facilitated, a criminal prosecution of Plaintiff for
7 the untrue-but-claimed violation of Penal Code §148(a)(1) by the San Joaquin County District
8 Attorney's Office.

9 26. Defendants conspired and agreed among themselves to punish Plaintiff and
10 justify Howard's blatantly excessive use of force. In furtherance of their agreement, Defendants
11 fabricated evidence, misled prosecutors, falsely reported the incident and committed perjury
12 with the improper purpose of procuring said criminal prosecution, maintaining said criminal
13 prosecution, and/or in completing the criminal prosecution by which Plaintiff was seized,
14 arrested, imprisoned, charged, and unsuccessfully tried.

15 27. The fabrication of evidence and false reporting of the incident played a material
16 role in Plaintiff's arrest for the asserted violation of Penal Code §148(a)(1) and the subsequent
17 criminal prosecution and was in retaliation for Plaintiff's exercise of his Constitutional rights
18 and/or to cover-up Defendants' own intentional misconduct.

19 28. At no time did any Defendant correct the false reporting, report the true events to
20 a supervising officer or file a supplemental report detailing what actually happened as they all had
21 a duty to do.

22 29. As a natural and expected cause of the fabricated criminal charges unlawfully
23 instigated, supported and maintained by Defendants, Plaintiff was damaged by the loss of his
24 Constitutional rights and he endured substantial mental pain and suffering in defending himself
25 within the criminal justice system including, but not limited to, worry, stress and anxiety

26 30. The acts of Defendants were willful and malicious, and motivated by a desire to
27 harm Plaintiff. Defendants' malfeasance is particularly odious because Defendants are public

28 ///

1 servants trusted to serve and protect members of the public, including Plaintiff. Such acts,
2 therefore, justify an award of punitive damages against each of them.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff, Trinidad Brown demands judgment against Defendants, and
6 each of them, jointly and severally, (except as to punitive damages) as follows:

7 1. For all available and appropriate general and special damages according to proof at
8 trial but in an amount no less than \$250,000.00;

9 2. Punitive damages against each Defendant in amount sufficient to punish and deter
10 them for similar conduct in the future according to proof at trial;

11 3. Pre-judgment interest pursuant to law;

12 4. Costs and attorney's fees;

13 5. Such other relief as the Court deems just and proper.
14

15 DATED: June 1, 2017

PICCUTA LAW GROUP, LLP

16 _____/s/ *Tony Piccuta*_____
17 Charles Tony Piccuta
18 Attorneys For Plaintiff
19 Trinidad Brown
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1 disturbance in which Yvette Ramos Britt was involved, and this involved 2 minor children
2 Laihonna Martinez Fleming and Joivae Martinez Fleming who were the children of Ms. Ramos.
3 The children had been in the care, custody and control of the Plaintiff's Mikhael Fleming,
4 Monica Fleming-Woods for the past 6 years as the children had been removed from the custody
5 of Yvette Ramos by the Child Protective Services in New Jersey, for negligence and child
6 endangerment.
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9 The minor children were left in the custody of the Mikhael Fleming and Monica
10 Fleming-Woods by the father Boivae Martinez Fleming, who received custody of the children in
11 early 2010, and had no visits with the children except for the one time in February 2016, when
12 the grandmother Monica Fleming-Woods allowed them a three hour visit as they did not know
13 Yvette Ramos and had no prior relationship with her in the previous six years. The father Boivae
14 Martinez Fleming who was incarcerated on an old case in 2013, then left the children in the care
15 and lawful custody of Mikhael Fleming and Monica Fleming-Woods, with guardianship of the
16 minors.
17

18
19 On June 7, 2016 the Stockton Police Department showed up at the residence located at
20 428 E. Poplar Street Stockton Ca. 95202, and the lead officer Digulio looked at court papers that
21 showed a court date, then lied and stated to Mikhael Fleming that Yvette Ramos Britt had a court
22 order and told him that he needed to bring the children out or he would be coming in there to
23 arrest him. Mikhael called Wiendi Morgan the aunt and she showed up to the residence, and
24 upon exiting her vehicle she then approached the officers. When Ms. Morgan asked Officer
25 Digulio what was going on, he then stated "this woman has a court order for the children!" Ms.
26 Morgan stated "then show me this court order!, because she was just in court today." Yvette
27 Ramos Britt had requested orders from the Judge and the presiding judge stated "I will not issue
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1 any orders today as you have not served the father of the children.” It should be noted that when
2 Ms. Morgan was waiting for Officer Digulio to show proof of the court order she asked his
3 partner did he see a court order and he stated “No! I just saw a bunch of papers with a court
4 date.” On this date June 7, 2016 Ms. Ramos Britt told the judge that she owned two businesses
5 in New Jersey, and later told the officers that she owned two condominiums in Waterbury
6 Connecticut and then stated that she lived five blocks away from the residence located at 428 E.
7 Poplar Street.
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11 At no time did the officers request identification from the young lady, who did not have
12 any form of picture identification on her person when Wiendi Morgan requested that they get
13 identification from her, she stated “that she does not have identification but she has a piece of
14 paper!.” Then after Ms. Morgan informed Officer Digulio that she was in court that day in
15 Department F2, he then called the court and found out that the Judge did not issue an order, but
16 asked him was there a reason that she could not get the children. Ms. Morgan stated “I have the
17 New Jersey CPS on the phone and they can tell you as they told the officers before in the
18 February incident that the children were taken from her, and in order for her to get them back she
19 has to go through San Joaquin County CPS. Officer Digulio told Ms. Morgan that if she did not
20 release the children to the young lady, then he would take her to jail based on Penal Code 278
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25 Officer Digulio stated “you can make this easy or hard.” It should be noted that Officer
26 Digulio refused to talk to the social worker from New Jersey CPS named Anna.
27
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29 **CAUSE OF ACTION I: Child Endangerment**

30 The Stockton Police Department and the Child Protective Services Agency of San
31 Joaquin County failed in their duty of care to protect the children, when the family had on more
32

1 than one occasion reached out for help, to stop Ms. Ramos Britt from harassing the family. The
2 fact that Officer Digulio and his superior ordered Ms. Morgan to give the children to a woman
3 that they had no relationship with or she would be arrested, just as he threatened to arrest
4 Mikhael Fleming based on lies from Yvette Ramos Britt without evidence, shows that there was
5 no thought for the dangers that the children would be placed in or for the violation of the
6 Plaintiff's rights.
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9 Despite the fact that they were informed that the children did not have a relationship with Yvette
10 Ramos Britt and had only seen her 1 time in six years, the Sergeant told Officer Digulio to force
11 Ms. Morgan to give the children over to Yvette Ramos Britt.
12

13 CAUSE OF ACTION II. POLICE MISCONDUCT 14

15 The fact that the Defendant not only threatened the Plaintiff's with arrest which was
16 unlawful, but abused the power and authority they had by removing the minors from the lawful
17 custody of the Plaintiff's, and giving the minors over to a woman who had no proof of identify
18 and despite being notified that the children had been removed by CPS and she would need to go
19 through them to get custody of the minors. The minors were stripped from the only home they
20 had ever known, and despite Ms. Morgan stating that Yvette Ramos Britt had no home and could
21 not prove residency, the Defendants never checked any information given by Ms. Morgan.
22 Yvette Ramos Britt while a child custody case was going in San Joaquin County removed the
23 children from the state immediately. The Defendants also being made aware of Ms. Britt's
24 having a serious arrest history and warrants, blatantly lied to Ms. Morgan stating that there were
25 no active warrants out of Connecticut and Nevada.
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Date 6-7-17



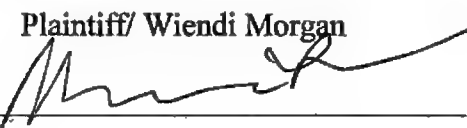
Plaintiff/ Mikhael Fleming

Date 6-7-17



Plaintiff/ Wiendi Morgan

Date 6-7-17



Plaintiff/ Monica Fleming-Woods

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

L.F., a minor, by and through Danisha Brown, and
K.F., a minor, by and through Danisha Brown,

Plaintiffs,

vs.

CITY OF STOCKTON, STOCKTON POLICE
DEPARTMENT, ERIC T. JONES, DAVID
WELLS, and DOE 1 to 50,

Defendants.

Case No.

**COMPLAINT FOR VIOLATION OF
CIVIL AND CONSTITUTIONAL RIGHTS**

DEMAND FOR JURY TRIAL

INTRODUCTION

This action is brought by L.F. and K.F., the minor daughters of Colby T. Friday, who was shot and killed by police officer DAVID WELLS, employed by the CITY OF STOCKTON and STOCKTON POLICE DEPARTMENT.

JURISDICTION & VENUE

1. This Court has jurisdiction over the claims asserted herein pursuant to 28 U.S.C. § 1331 (in that they arise under the United States Constitution); 28 U.S.C. § 1343(a)(3) (in that the action is

1 brought to address deprivations, under color of state authority, of rights, privileges, and immunities
2 secured by the United States Constitution). This Court has supplemental jurisdiction of the state law
3 claims under 28 U.S.C. § 1367.

4 2. Venue is proper in the United State District Court for the Eastern District of California
5 pursuant to 28 U.S.C. § 1391(b) because the Defendants are located in the Eastern District of California
6 and because many of the acts and/or omissions described herein occurred in the Eastern District of
7 California.

8 3. Intradistrict venue is proper in the Sacramento Division of the Eastern District of
9 California pursuant to E.D. Cal. L.R. 120(d) because the claims asserted herein arise from acts and/or
10 omissions which occurred in the County of San Joaquin, California.

11 4. Plaintiffs L.F. and K.F. filed a government claim with the CITY OF STOCKTON,
12 regarding the claims asserted herein, on February 16, 2017. That claim was rejected on March 14, 2017.

13 **PARTIES**

14 5. Plaintiff L.F. is a resident of the State of California, County of Alameda. Plaintiff L.F. is
15 the daughter of Colby T. Friday. Plaintiff L.F. is a minor and pursues this litigation through her guardian
16 ad litem, Danisha Brown.

17 6. Plaintiff K.F. is a resident of the State of California, County of Alameda. Plaintiff K.F. is
18 the daughter of Colby T. Friday. Plaintiff K.F. is a minor and pursues this litigation through her guardian
19 ad litem, Danisha Brown.

20 7. Defendant CITY OF STOCKTON is a "public entity" within the definition of Cal. Gov.
21 Code § 811.2.

22 8. Defendant STOCKTON POLICE DEPARTMENT is a "public entity" within the
23 definition of Cal. Gov. Code § 811.2.

24 9. Defendant ERIC T. JONES is, at all material times herein was, the Chief of Police of
25 Defendants CITY OF STOCKTON and STOCKTON POLICE DEPARTMENT, acting within the scope
26 of that agency or employment and under color of state law. Defendant ERIC T. JONES is sued in his
27 individual capacity.

28 10. Defendant DAVID WELLS is, and at all material times herein was, a law enforcement

1 officer employed by Defendants CITY OF STOCKTON and STOCKTON POLICE DEPARTMENT,
2 acting within the scope of that agency or employment and under color of state law. Defendant DAVID
3 WELLS is sued in his individual capacity.

4 11. Defendants DOE 1 to 50 are and/or were agents or employees of Defendants CITY OF
5 STOCKTON and STOCKTON POLICE DEPARTMENT, and acted within the scope of that agency or
6 employment and under color of state law. The true and correct names of Defendants DOE 1 to 50 are not
7 now known to Plaintiffs L.F. and K.F. who sues such Defendants by their fictitious names. Plaintiffs L.F.
8 and K.F. will substitute the true and correct names of Defendants DOE 1 to 50 when ascertained.

9 **GENERAL ALLEGATIONS**

10 12. At all times relevant herein, all wrongful acts described were performed under color of
11 state law and/or in concert with or on behalf of those acting under the color of state law.

12 13. Colby T. Friday was a 30 year old black man residing in Stockton, California.

13 14. Plaintiffs L.F. and K.T. shared a close relationship and special bond with Colby T. Friday,
14 their father. The relationships that Plaintiffs L.F. and K.F. shared with Colby T. Friday presupposed deep
15 attachments, commitments, and distinctively personal aspects of their lives.

16 **The Killing of Colby T. Friday**

17 15. On August 16, 2016, Colby T. Friday was located near Jamestown and Sousa Streets, in
18 Stockton, California.

19 16. Colby T. Friday was walking, on foot, on a sidewalk.

20 17. Defendant DAVID WELLS arrived at the scene in his patrol vehicle.

21 18. Defendant DAVID WELLS is a K-9 officer with a K-9 partner.

22 19. Defendant DAVID WELLS exited his patrol vehicle, leaving his K-9 partner inside of the
23 vehicle.

24 20. Defendant DAVID WELLS observed Colby T. Friday.

25 21. Defendant DAVID WELLS began running, on foot, towards Colby T. Friday.

26 22. Colby T. Friday became fearful when he observed Defendant DAVID WELLS running
27 towards his location.

28 23. Colby T. Friday turned and ran in the direction opposite of Defendant DAVID WELLS.

24. Defendant DAVID WELLS pursued Colby T. Friday.

25. Colby T. Friday ran around a nearby building, to an area located behind the building.

26. A locked gate blocked Colby T. Friday's path behind the building.

27. Colby T. Friday approached the locked gate.

28. Defendant DAVID WELLS was behind Colby T. Friday as he approached the locked gate.

29. Defendant DAVID WELLS shot Colby T. Friday at least twice with his service pistol.

30. Colby T. Friday's back was facing Defendant DAVID WELLS at the time that he was shot.

31. Colby T. Friday did not pose a threat to anyone at any time, including the period of time that Defendant DAVID WELLS pursued him until Defendant DAVID WELLS shot him.

32. Colby T. Friday died at the scene of the shooting.

33. According to one eye-witness, a person living in a second-story apartment unit near the scene of the shooting, immediately before shooting and killing an unarmed Colby T. Friday, Defendant DAVID WELLS said, "I'm going to shoot you in the back."

34. Defendant DAVID WELLS had on his person a department-issued body-camera. At no time immediately prior to or during Defendant DAVID WELLS's interaction with Colby T. Friday did he activate his body-camera. Defendant DAVID WELLS's failure to activate his body-camera violated the policies of Defendants CITY OF STOCKTON and STOCKTON POLICE DEPARTMENT.

City of Stockton & Stockton Police Department's Response

35. On August 16, 2016, following the shooting, Defendants CITY OF STOCKTON and STOCKTON POLICE DEPARTMENT placed Defendant DAVID WELLS on three-day paid administrative leave.

36. Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, and DOE 1 to 50, issued false and misleading media statements in an attempt to control the narrative of the shooting. Several aspects of the media statements were false. All aspects of the media statements were issued before any investigation or determination of their accuracy had been completed and verified. Several aspects of the media statements were directly contradicted by eye-witnesses who

1 had provided police statements.

2 37. On August 16, 2016, Defendants CITY OF STOCKTON and STOCKTON POLICE
3 DEPARTMENT issued a publicly-available "Watch Commander's Activity Report." See
4 <<https://www.tipsoftonline.com/Push/uploads/572/081616DM.pdf>>. Therein, Colby T. Friday's
5 shooting was described as follows:

6 **"Officer Involved Shooting (1402) Jamestown Street and Kentfield Road, Valley Oak**
7 **District**

8 A Stockton Police Officer was attempting to contact a suspect in relation to a robbery
9 investigation. The suspect fled on foot, and a foot pursuit ensued. During the foot chase,
10 the suspect pulled out a firearm and was subsequently shot by the officer. The suspect was
11 transported to an area hospital where he was pronounced deceased."

12 38. Immediately following the shooting, Defendant STOCKTON POLICE DEPARTMENT's
13 spokesperson, Joe Silva, provided a media statement concerning the killing of Colby T. Friday which
14 included the following statements:

15 a) "The officer was following up on a robbery investigation, at which point he saw a
16 person who matched the robbery suspect. That suspect ran away from the officer,
17 armed with a handgun. Our officer gave chase, on foot, and the suspect refused to
18 comply with our officer's orders. At which point, our office, not only fearing for
19 his safety but others in the area, fired his service weapon, striking the suspect. The
20 suspect was then transported to an area hospital where he was pronounced
21 deceased. At this time we have initiated a multi-agency protocol investigation and
22 I have no further information I can release until we get more information from the
23 protocol interviews."

24 b) "More details will come out during the interview with the officer and any potential
25 witnesses who saw what happened, but any time you have a suspect who's armed
26 with a handgun fleeing into a neighborhood, that is a very dangerous situation for
27 the people in this neighborhood and also for the officer."

28 c) "You don't know what this suspect is capable of doing, and the preliminary

1 information we have is that he was refusing our officer's commands. People who
2 are armed with handguns can turn violent and deadly for innocent people in this
3 area, and that's something we didn't want to happen here today, so our officer did
4 what he was trained to do."

5 39. The media statement sought to cast Colby T. Friday in a negative light. Colby T. Friday
6 was characterized as a documented gang member with a record of arrests for robbery, weapons
7 possession, and resisting arrest.

8 40. An August 16, 2016, "tweet" from Defendant STOCKTON POLICE DEPARTMENT's
9 Twitter account, <<https://twitter.com/stocktonpolice>>, published at 3:51 p.m., hours after the shooting,
10 contained a photo of a handgun on the ground and the accompanying message: "Stockton OIS Update:
11 photo of suspect's handgun. Suspect has died from injuries at a local hospital."

12 41. A day after issuing the initial media statement, Defendants CITY OF STOCKTON and
13 STOCKTON POLICE DEPARTMENT's spokesperson Joe Silva issued a further media statement
14 retracting, revising, and contradicting the initial media statement in several significant respects. Now,
15 according to the second media statement, Colby T. Friday was a "domestic violence suspect" and was
16 attempting to pick up weapon at the time he was shot, as opposed to a "robbery suspect" that was "armed
17 with a handgun" at the time he was shot, as announced immediately after the shooting.

18 42. According to the second media statement, a domestic violence incident occurred a week
19 prior to the shooting of Colby T. Friday. The suspect in the domestic violence incident was said to be
20 armed and Defendant DAVID WELLS believed Colby T. Friday looked like the domestic violence
21 suspect and attempted to approach him. Defendant DAVID WELLS chased after a fleeing Colby T.
22 Friday and, during the chase, Colby T. Friday dropped a gun before he stopped running. Defendant
23 DAVID WELLS told Colby T. Friday not to pick up the weapon but Colby T. Friday did attempt to pick
24 up the weapon, at which time Defendant DAVID WELLS shot him.

25 43. In October 2016, months after the shooting, it was revealed by Defendant ERIC T.
26 JONES, Chief of Police, that Defendant DAVID WELLS had failed to activate his body-camera prior to
27 pursuing and shooting Colby T. Friday. This information was revealed at the same time that it was
28 announced that Defendants CITY OF STOCKTON and STOCKTON POLICE DEPARTMENT would

1 be upgrading their body-cameras. The joint announcement was an attempt by Defendants CITY OF
2 STOCKTON, STOCKTON POLICE DEPARTMENT, and ERIC T. JONES to diminish Defendant
3 DAVID WELLS's failure to activate his body-camera and to continue to control the narrative of the
4 Colby T. Friday shooting.

5 **MUNICIPAL & SUPERVISORY ALLEGATIONS**

6 44. Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T.
7 JONES, and DOE 1 to 50's failure adequately to train, supervise, and/or discipline their police force has
8 created, fostered, and/or contributed to an unchecked culture of police misconduct and abuse.

9 45. Defendant ERIC T. JONES, acting as Chief of Police, was a final policy-making authority
10 for Defendants CITY OF STOCKTON and STOCKTON POLICE DEPARTMENT as it relates to the
11 training, supervision, and discipline of police officers under his command, including use of excessive
12 force. *See* Cal. Gov. Code § 38630(a). Defendant ERIC T. JONES has been employed by Defendants
13 CITY OF STOCKTON and STOCKTON POLICE DEPARTMENT since 1993, has acted as a
14 supervisory employee since 2005, and has acted as Chief of Police since March 2012.

15 46. Defendants DOE 1 to 50 are/were policy-making authorities based on a delegation of
16 authority for Defendants CITY OF STOCKTON and STOCKTON POLICE DEPARTMENT as it relates
17 to the training, supervision, and discipline of police officers under his command, including use of
18 excessive force.

19 47. Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T.
20 JONES, and DOE 1 to 50 knew or should have known that the subordinate employees under their
21 command, including Defendant DAVID WELLS, were inadequately trained, supervised, or disciplined
22 resulting from their inadequate policies, customs, or practices.

23 48. Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T.
24 JONES, and DOE 1 to 50 maintained policies, customs, or practices deliberately indifferent to and/or
25 acquiescing in, and/or failed to maintain policies, customs, or practices when it was obvious that they
26 were needed to prevent the use of unreasonable force against persons with whom their employees would
27 necessarily have contact. The presence of these policies, customs, or practices is confirmed by and
28 consistent with the killing of Colby T. Friday and the related actions of Defendant DAVID WELLS.

49. Defendants CITY OF STOCKTON and STOCKTON POLICE DEPARTMENT have a significant history of problematic officer-involved shootings and use of unreasonable force, particularly with respect to the shooting and killing of unarmed and non-threatening African-American men. On information and belief, within the last six years, Defendants CITY OF STOCKTON and STOCKTON POLICE DEPARTMENT's police force has shot 27 individuals, killing 17.

50. Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, and DOE 1 to 50 maintained policies, customs, or practices deliberately indifferent or acquiescing to the use of unreasonable force by employees of the STOCKTON POLICE DEPARTMENT against persons with whom their employees would necessarily have contact through the refusal and failure of Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, and DOE 1 to 50 to discipline the employees involved in the use of unreasonable force including the failure to terminate the employment of any offending employees and failing even to limit these offending employees' access to weapons and munitions or to limit these offending employees' contact with and jurisdiction over members of the public.

51. Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, and DOE 1 to 50 were or should have been on notice of these policies, customs, or practices, or the inadequacy of the policies, customs, or practices, through multiple sources, including:

- i) Multiple past and subsequent instances of use of unreasonable force by Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, and ERIC T. JONES's police force, resulting in the filing of lawsuits, government claims, and citizens' complaints and the payment of settlements. For example, *Haynes v. Johnson*, E.D. Cal. Case No. 2:15-cv-00565-WBS-DB (\$90,000 settlement paid to man shot by Stockton Police Department police officer during a traffic stop <<http://www.recordnet.com/news/20170714/stockton-settles-fatal-officer-involved-shooting-suit-for-90000>>); *Smith v. City of Stockton*, E.D. Cal. Case No. 2:15-cv-02511-MCE-AC (\$307,500 settlement paid to mentally ill man attacked by Stockton Police Department police officer and K-9 partner <<http://www.recordnet.com/news/20160613/police-dog-bite-brings-307500-settlement>>); *R.T. v. City of Stockton*, E.D. Cal. Case No. 2:15-cv-00430-TLN-DB (\$500,000 settlement

1 paid to family of mentally-ill man shot and killed by Stockton Police Department police
2 officers <[http://www.recordnet.com/news/20161013/city-settles-wrongful-death-lawsuit-](http://www.recordnet.com/news/20161013/city-settles-wrongful-death-lawsuit-for-550000)
3 [for-550000](http://www.recordnet.com/news/20161013/city-settles-wrongful-death-lawsuit-for-550000)>); *Hallon v. City of Stockton*, E.D. Cal. Case No. 2:11-cv-00462-GEB-AC
4 (\$55,000 settlement paid to man allegedly beaten by Stockton Police Department police
5 officers <http://www.recordnet.com/article/20130130/a_news/130139988>); *Moore v.*
6 *City of Stockton*, E.D. Cal. Case No. 2:13-cv-02104-WBS-EFB (\$210,000 settlement paid
7 to elderly man allegedly attacked by Stockton Police Department police officers); *Breed v.*
8 *City of Stockton*, E.D. Cal. Case No. 2:10-cv-00650-GEB-GGH (settlement paid to man
9 who allegedly had guns pointed at his face and was tased and beaten by Stockton Police
10 Department police officers). See also pending litigation, for example, *Smith v. City of*
11 *Stockton*, E.D. Cal. Case No. 2:10-cv-02495-MCE-CKD at ECF No. 108 (denying
12 summary judgment and qualified immunity to Stockton Police Department police officers
13 who shot 30 times an allegedly unarmed man); *Pimentel v. City of Stockton*, E.D. Cal.
14 Case No. 2:17-cv-00931-WBS-AC (alleging that Stockton Police Department police
15 officers killed a compliant, unarmed man following a traffic stop); *Smith v. City of*
16 *Stockton*, E.D. Cal. Case No. 2:15-cv-00363-KJM-AC (alleging that Stockton Police
17 Department police officers shot an unarmed, surrendering man); *Valencia v. City of*
18 *Stockton*, E.D. Cal. Case No. 2:16-cv-02081-JAM-AC (alleging Stockton Police
19 Department police officers tased and beat to death a mentally ill man); *Cooke v. City of*
20 *Stockton*, E.D. Cal. Case No. 2:14-cv-00908-KJM-KJN (alleging that Stockton Police
21 Department police officers beat a man then wrapped him in "safe wrap," resulting in his
22 death by asphyxiation); *Brown v. City of Stockton*, E.D. Cal. Case No. 2:13-cv-01007-
23 KJM-KJN (alleging that Stockton Police Department police officers shot a man 11 times
24 while he was unarmed and lying on his back); *Koussaya v. City of Stockton*, San Joaquin
25 County Superior Court Case No. STK-CV-UNPI-2016-0003703 (victim of kidnapping
26 during bank robbery was allegedly shot multiple times by several Stockton Police
27 Department police officers during pursuit where "32 officers shot as many as 600
28 indiscriminate bullets").

- 1 ii) The multiple instances of misconduct that occurred in an open and public setting by
- 2 Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, and ERIC
- 3 T. JONES's police force, indicating they act with impunity and with total disregard of the
- 4 law.
- 5 iii) The involvement of multiple of Defendants CITY OF STOCKTON, STOCKTON
- 6 POLICE DEPARTMENT, and ERIC T. JONES's police force in instances of misconduct,
- 7 indicating action without intervention and integral participation.
- 8 iv) Defendant DAVID WELLS's multiple violations of constitutional rights committed in the
- 9 process of seizing and killing Colby T. Friday.

10 52. Defendant DAVID WELLS has been employed by Defendants CITY OF STOCKTON
11 and STOCKTON POLICE DEPARTMENT as a police officer since 2003. Defendants CITY OF
12 STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, and DOE 1 to 50 were or
13 should have been on notice of Defendant DAVID WELLS's unfitness for duty and frequent resort to
14 unlawful action through multiple sources, including:

- 15 a) On information and belief, Defendant DAVID WELLS was known to be a violent police
- 16 officer and has been the subject of multiple citizens' complaints alleging his unlawful
- 17 conduct, including instances of use of unreasonable force.
- 18 b) On February 15, 2015, more than a year before Defendant DAVID WELLS killed Colby
- 19 T. Friday, one source of alleged reporting of misconduct and abuse by Defendant
- 20 STOCKTON POLICE DEPARTMENT police officers, the "Stockton Police Department
- 21 Corruption Reporting Page," <[https://www.facebook.com/Stockton-Police-Department-](https://www.facebook.com/Stockton-Police-Department-Corruption-Reporting-Page-20-609954912484173/)
- 22 [Corruption-Reporting-Page-20-609954912484173/](https://www.facebook.com/Stockton-Police-Department-Corruption-Reporting-Page-20-609954912484173/)>, published a list of ten of Defendant
- 23 STOCKTON POLICE DEPARTMENT's police officers to "keep an eye out for."
- 24 Defendant DAVID WELLS was identified as number 1, first on the list.
- 25 c) In *People v. Fazzio*, No. C071526, 2013 Cal. App. Unpub. LEXIS 5212 (Cal. Ct. App.
- 26 July 24, 2013), the California Court of Appeals reversed a conviction based on Defendant
- 27 DAVID WELLS's illegal searches and seizures in violation of the Fourth Amendment
- 28 occurring in February 2010.

53. On information and belief, additional evidence and information related to Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, and DOE 1 to 50's policies, customs, or practices will be sought and obtained during the course of this litigation. Although access to the existence or absence of internal policies, customs, or practices, prior to discovery, is necessarily limited, on information and belief, Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, and DOE 1 to 50 have access to and/or knowledge of past events and to statements of internal policies, customs, or practices at issue and, in some respects, may be in sole possession of evidence and facts needed to support or refute these claims.

54. Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, and DOE 1 to 50 ratified and approved of Defendant DAVID WELLS's decisions and the basis for them, including seizing and utilizing unreasonable lethal force against Colby T. Friday, without justification, where they:

- a) Issued a public statement the same day and immediately after the shooting occurred that stated that Defendant DAVID WELLS's actions were justified, before sufficient investigation into the incident had occurred and without knowledge of the actual facts;
- b) Refused to disseminate and obstructed public access to recordings and information concerning Colby T. Friday's shooting, including contradicting eye-witnesses statements;
- c) Failed to find that Defendant DAVID WELLS's actions in pursuing and killing Colby T. Friday were inconsistent, uncompliant, or not conforming with Defendants CITY OF STOCKTON and STOCKTON POLICE DEPARTMENT policies;
- d) Failed to find that Defendant DAVID WELLS's actions in pursuing and killing Colby T. Friday were inconsistent, uncompliant, or not conforming with mandatory training provided by the Commission on Peace Officer Standards and Training;
- e) Failed to terminate or even to reprimand, discipline, or admonish Defendant DAVID WELLS in connection with Colby T. Friday's killing; and/or
- f) Failed to enact new or different policies, or to amend existing policies, that would prevent use of unreasonable force in the future.

FIRST CLAIM

Right of Familial Association, Companionship, and Society

(Fourteenth Amendment to the U.S. Constitution; 42 U.S.C. § 1983)

55. The First Claim is asserted by Plaintiffs L.F. and K.F. against Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, DAVID WELLS, and DOE 1 to 50.

56. Plaintiffs L.F. and K.F. reallege and incorporate the allegations of the preceding paragraphs 1 to 54, to the extent relevant, as if fully set forth in this Claim.

57. Defendant DAVID WELLS, acting or purporting to act in the performance of his official duties as a law enforcement officer, utilized unreasonable force in seizing and killing Colby T. Friday, in violation of his Fourth and Fourteenth Amendment rights protected by the U.S. Constitution, thereby depriving and interfering with Plaintiffs L.F. and K.F.'s constitutionally-protected right of familial association, companionship, and society with their father, in violation of their Fourteenth Amendment rights protected by the U.S. Constitution.

58. Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, and DOE 1 to 50, acting under color of state law and as policy-making authorities, maintained policies, customs, or practices permitting or deliberately indifferent to, or failed to maintain policies, customs, or practices when it was obvious that they were needed to prevent, the use of excessive force, or ratified and approved of Defendant DAVID WELLS's decisions and the basis for them, and were the moving force behind Defendant DAVID WELLS's violation of Plaintiffs L.F. and K.F.'s Fourteenth Amendment rights secured by the U.S. Constitution.

59. Defendants ERIC T. JONES, DAVID WELLS, and DOE 1 to 50's actions and inactions were motivated by evil motive or intent, involved reckless or callous indifference to Plaintiffs L.F. and K.F.'s Fourteenth Amendment rights secured by the U.S. Constitution, or were wantonly or oppressively done.

60. As a direct and proximate result of Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, DAVID WELLS, and DOE 1 to 50's actions and inactions, Plaintiffs L.F. and K.F. suffered injuries entitling them to receive compensatory damages against

Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, DAVID WELLS and DOE 1 to 50, declaratory and injunctive relief against Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, and punitive damages against Defendants ERIC T. JONES, DAVID WELLS, and DOE 1 to 50.

WHEREFORE, Plaintiffs L.F. and K.F. pray for relief as hereunder appears

SECOND CLAIM

Right of Familial Association, Companionship, and Society

(First & Fourteenth Amendments to the U.S. Constitution; 42 U.S.C. § 1983)

61. The Second Claim is asserted by Plaintiffs L.F. and K.F. against Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, DAVID WELLS, and DOE 1 to 50.

62. Plaintiffs L.F. and K.F. reallege and incorporate the allegations of the preceding paragraphs 1 to 54, to the extent relevant, as if fully set forth in this Claim.

63. Defendant DAVID WELLS, acting or purporting to act in the performance of his official duties as a law enforcement officer, utilized unreasonable force in seizing and killing Colby T. Friday, in violation of his Fourth and Fourteenth Amendment rights protected by the U.S. Constitution, thereby depriving and interfering with Plaintiffs L.F. and K.F.'s constitutionally-protected right of familial association, companionship, and society with their father, in violation of their First and Fourteenth Amendment rights protected by the U.S. Constitution.

64. Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, and DOE 1 to 50, acting under color of state law and as policy-making authorities, maintained policies, customs, or practices permitting or deliberately indifferent to, or failed to maintain policies, customs, or practices when it was obvious that they were needed to prevent, the use of excessive force, or ratified and approved of Defendant DAVID WELLS's decisions and the basis for them, and were the moving force behind Defendant DAVID WELLS's violation of Plaintiffs L.F. and K.F.'s First and Fourteenth Amendment rights secured by the U.S. Constitution.

65. Defendants ERIC T. JONES, DAVID WELLS, and DOE 1 to 50's actions and inactions were motivated by evil motive or intent, involved reckless or callous indifference to Plaintiffs L.F. and

1 K.F.'s First and Fourteenth Amendment rights secured by the U.S. Constitution, or were wantonly or
2 oppressively done.

3 66. As a direct and proximate result of Defendants CITY OF STOCKTON, STOCKTON
4 POLICE DEPARTMENT, ERIC T. JONES, DAVID WELLS, and DOE 1 to 50's actions and inactions,
5 Plaintiffs L.F. and K.F. suffered injuries entitling them to receive compensatory damages against
6 Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, DAVID
7 WELLS and DOE 1 to 50, declaratory and injunctive relief against Defendants CITY OF STOCKTON,
8 STOCKTON POLICE DEPARTMENT, ERIC T. JONES, and punitive damages against Defendants
9 ERIC T. JONES, DAVID WELLS, and DOE 1 to 50.

10 WHEREFORE, Plaintiffs L.F. and K.F. pray for relief as hereunder appears.

11 **THIRD CLAIM**

12 **Right of Familial Association, Companionship, and Society**

13 **(Article I, § 7 of the California Constitution; Cal. Gov. Code §§ 815.2(a) & 820(a))**

14 67. The Third Claim is asserted by Plaintiffs L.F. and K.F. against Defendants CITY OF
15 STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, DAVID WELLS, and DOE 1
16 to 50.

17 68. Plaintiffs L.F. and K.F. reallege and incorporate the allegations of the preceding
18 paragraphs 1 to 54, to the extent relevant, as if fully set forth in this Claim.

19 69. Defendant DAVID WELLS, acting or purporting to act in the performance of his official
20 duties as a law enforcement officer, utilized unreasonable force in seizing and killing Colby T. Friday, in
21 violation of his Fourth and Fourteenth Amendment rights protected by the U.S. Constitution and art. I, §
22 13 of the California Constitution, thereby depriving and interfering with Plaintiffs L.F. and K.F.'s
23 constitutionally-protected right of familial association, companionship, and society with their father, in
24 violation of their First and Fourteenth Amendment rights protected by the U.S. Constitution and art. I, § 7
25 of the California Constitution.

26 70. Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T.
27 JONES, and DOE 1 to 50, acting under color of state law and as policy-making authorities, maintained
28 policies, customs, or practices permitting or deliberately indifferent to, or failed to maintain policies,

1 customs, or practices when it was obvious that they were needed to prevent, the use of excessive force, or
2 ratified and approved of Defendant DAVID WELLS's decisions and the basis for them, and were the
3 moving force behind Defendant DAVID WELLS's violation of Plaintiffs L.F. and K.F.'s First and
4 Fourteenth Amendment rights secured by the U.S. Constitution and art. I, § 7 of the California
5 Constitution.

6 71. Defendants CITY OF STOCKTON and STOCKTON POLICE DEPARTMENT are
7 indirectly and vicariously liable, through the principles of *respondeat superior*, for injuries proximately
8 caused by acts or omissions of their employees acting within the scope of their employment.

9 72. Defendants ERIC T. JONES, DAVID WELLS, and DOE 1 to 50's actions and inactions
10 constituted oppression and/or malice resulting in great harm to Plaintiffs L.F. and K.F.

11 73. As a direct and proximate result of Defendants CITY OF STOCKTON, STOCKTON
12 POLICE DEPARTMENT, ERIC T. JONES, DAVID WELLS, and DOE 1 to 50's actions and inactions,
13 Plaintiffs L.F. and K.F. suffered injuries entitling them to receive compensatory damages against
14 Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, DAVID
15 WELLS and DOE 1 to 50, declaratory and injunctive relief against Defendants CITY OF STOCKTON,
16 STOCKTON POLICE DEPARTMENT, ERIC T. JONES, and punitive damages against Defendants
17 ERIC T. JONES, DAVID WELLS, and DOE 1 to 50.

18 WHEREFORE, Plaintiffs L.F. and K.F. pray for relief as hereunder appears.

19 **FOURTH CLAIM**

20 **Bane Act**

21 (Cal. Civ. Code § 52.1(b); Cal. Gov. Code §§ 815.2(a) & 820(a))

22 74. The Fourth Claim is asserted by Plaintiffs L.F. and K.F. against Defendants CITY OF
23 STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, DAVID WELLS, and DOE 1
24 to 50.

25 75. Plaintiffs L.F. and K.F. reallege and incorporate the allegations of the preceding
26 paragraphs 1 to 73, to the extent relevant, as if fully set forth in this Claim.

27 76. Defendant DAVID WELLS, acting or purporting to act in the performance of his official
28 duties as a law enforcement officer, utilized unreasonable force in seizing and killing Colby T. Friday, in

1 violation of his Fourth and Fourteenth Amendment rights protected by the U.S. Constitution and art. I, §
2 13 of the California Constitution, thereby depriving and intentionally interfering with Plaintiffs L.F. and
3 K.F.'s constitutionally-protected right of familial association, companionship, and society with their
4 father, by threats, intimidation, or coercion, and in violation of their First and Fourteenth Amendment
5 rights protected by the U.S. Constitution and art. I, § 7 of the California Constitution.

6 77. Defendants CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T.
7 JONES, and DOE 1 to 50, acting under color of state law and as policy-making authorities, maintained
8 policies, customs, or practices permitting or deliberately indifferent to, or failed to maintain policies,
9 customs, or practices when it was obvious that they were needed to prevent, the use of excessive force, or
10 ratified and approved of Defendant DAVID WELLS's decisions and the basis for them, and were the
11 moving force, by threats, intimidation, or coercion, behind Defendant DAVID WELLS's violation of
12 Plaintiffs L.F. and K.F.'s First and Fourteenth Amendment rights secured by the U.S. Constitution and
13 art. I, § 7 of the California Constitution.

14 78. Defendants CITY OF STOCKTON and STOCKTON POLICE DEPARTMENT are
15 indirectly and vicariously liable, through the principles of *respondeat superior*, for injuries proximately
16 caused by acts or omissions of their employees acting within the scope of their employment.

17 79. Defendants ERIC T. JONES, DAVID WELLS, and DOE 1 to 50's actions and inactions
18 constituted oppression and/or malice resulting in great harm to Plaintiffs L.F. and K.F.

19 As a direct and proximate result of Defendants CITY OF STOCKTON, STOCKTON POLICE
20 DEPARTMENT, ERIC T. JONES, DAVID WELLS, and DOE 1 to 50's actions and inactions, Plaintiffs
21 L.F. and K.F. suffered injuries entitling them to receive compensatory damages against Defendants CITY
22 OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, DAVID WELLS and DOE
23 1 to 50, declaratory and injunctive relief against Defendants CITY OF STOCKTON, STOCKTON
24 POLICE DEPARTMENT, ERIC T. JONES, and punitive damages against Defendants ERIC T. JONES,
25 DAVID WELLS, and DOE 1 to 50.

26 WHEREFORE, Plaintiffs L.F. and K.F. pray for relief as hereunder appears.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiffs L.F. and K.F. seek Judgment as follows:

1 1. For an award of compensatory, general, and special damages against Defendants CITY
2 OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, DAVID WELLS, and DOE
3 1 to 50, according to proof at trial;

4 2. For an award of exemplary/punitive damages against Defendants ERIC T. JONES,
5 DAVID WELLS, and DOE 1 to 50, in an amount sufficient to deter and to make an example of them,
6 because their actions and/or inactions, as alleged, were motivated by evil motive or intent, involved
7 reckless or callous indifference to federally protected rights, or were wantonly or oppressively done, or
8 constituted oppression and/or malice resulting in great harm;

9 3. For an award of declaratory or injunctive relief, enjoining and restraining Defendants
10 CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, ERIC T. JONES, and DOE 1 to 50
11 from continuing or repeating the policies, customs, or practices complained of herein;

12 4. For an award of reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 1988, Cal.
13 Civ. Code 52.1, Cal. Code Civ. Proc. § 1021.5, or any and any other statute as may be applicable; and

14 5. For an award of any other further relief, as the Court deems fair, just, and equitable.

15 Dated: August 8, 2017

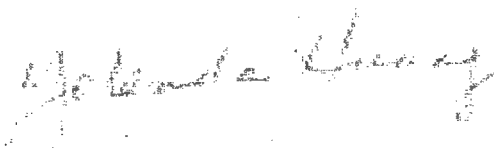
Respectfully Submitted,

16 

17 By: _____

18 Mark E. Merin
19 Paul H. Masuhara
20 LAW OFFICE OF MARK E. MERIN
21 1010 F Street, Suite 300
Sacramento, California 95814

22 Dated: August 8, 2017

23 

24 By: _____

25 Yolanda Huang
26 LAW OFFICES OF YOLANDA HUANG
27 499 14th Street, Suite 300
28 Oakland, California 94612

Attorneys for Plaintiffs
L.F. and K.F.

JURY TRIAL DEMAND

A JURY TRIAL IS DEMANDED on behalf of Plaintiffs L.F. and K.F.

Dated: August 8, 2017

Respectfully Submitted,



By: _____

Mark E. Merin

Paul H. Masuhara

LAW OFFICE OF MARK E. MERIN

1010 F Street, Suite 300

Sacramento, California 95814

Telephone: (916) 443-6911

Facsimile: (916) 447-8336

Yolanda Huang

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499 14th Street, Suite 300

Oakland, California 94612

Telephone: (510) 839-1200

Facsimile: (510) 444-6698

Attorneys for Plaintiffs

L.F. and K.F.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Dzmitry Lishyk, SBN: 291741

BASH & POLYACHENKO, P.C.

7231 Santa Monica Boulevard

7231 Santa Monica Boulevard

West Hollywood, California 90046

TELEPHONE NO: (323) 850-0101

FAX NO. (Optional): (323) 850-0407

E-MAIL ADDRESS (Optional): dzmitry@bashpoly.com

ATTORNEY FOR (Name): Plaintiff Ramiro Munoz Vazquez

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Joaquin

STREET ADDRESS: 180 E Weber Ave Ste 200

MAILING ADDRESS: 180 E Weber Ave Ste 200

CITY AND ZIP CODE: Stockton, CA 95202

BRANCH NAME: Stockton Courthouse

PLAINTIFF: Ramiro Munoz Vazquez, an individual

DEFENDANT: Joshua Adam Dejong, an individual, Stockton Police Department, a public entity, City of Stockton, a public entity

☒ DOES TO 20, inclusive

COMPLAINT—Personal Injury, Property Damage, Wrongful Death

☐ AMENDED (Number):

Type (check all that apply):

☒ MOTOR VEHICLE☐ OTHER (specify):☒ Property Damage☐ Wrongful Death☒ Personal Injury☐ Other Damages (specify):

Jurisdiction (check all that apply):

☒ ACTION IS A LIMITED CIVIL CASEAmount demanded ☐ does not exceed \$10,000☒ exceeds \$10,000, but does not exceed \$25,000☐ ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)☐ ACTION IS RECLASSIFIED by this amended complaint☐ from limited to unlimited☐ from unlimited to limited

STK-CV-

LAT -2017-87101

\$225 / #201500

1. Plaintiff (name or names): Ramiro Munoz Vazquez, an individual

alleges causes of action against defendant (name or names): Joshua Adam Dejong, an individual, Stockton Police Department, a public entity, City of Stockton, a public entity

2. This pleading, including attachments and exhibits, consists of the following number of pages: 4 (four)

3. Each plaintiff named above is a competent adult

a. ☐ except plaintiff (name):(1) ☐ a corporation qualified to do business in California(2) ☐ an unincorporated entity (describe):(3) ☐ a public entity (describe):(4) ☐ a minor ☐ an adult(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed(b) ☐ other (specify):(5) ☐ other (specify):b. ☐ except plaintiff (name):(1) ☐ a corporation qualified to do business in California(2) ☐ an unincorporated entity (describe):(3) ☐ a public entity (describe):(4) ☐ a minor ☐ an adult(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed(b) ☐ other (specify):(5) ☐ other (specify):☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

FILED BY FAX

FILED
FOR COURT USE ONLY
SUPERIOR COURT

2017 AUG 21 PM 4:08

Kelly Foreman
JUNQUEIRO CLERK
DEPUTY

SHORT TITLE: Vazquez v. Dejong, et al.

CASE NUMBER:

4. ☐ Plaintiff (name):
is doing business under the fictitious name (specify):
and has complied with the fictitious business name laws.
5. Each defendant named above is a natural person
- a. ☒ except defendant (name): Stockton Police Department
- (1) ☐ a business organization, form unknown
(2) ☐ a corporation
(3) ☐ an unincorporated entity (describe):
(4) ☒ a public entity (describe): law enforcement agency
(5) ☐ other (specify):
- c. ☐ except defendant (name):
- (1) ☐ a business organization, form unknown
(2) ☐ a corporation
(3) ☐ an unincorporated entity (describe):
(4) ☐ a public entity (describe):
(5) ☐ other (specify):
- b. ☒ except defendant (name): City of Stockton
- (1) ☐ a business organization, form unknown
(2) ☐ a corporation
(3) ☐ an unincorporated entity (describe):
(4) ☒ a public entity (describe): municipality
(5) ☐ other (specify):
- d. ☐ except defendant (name):
- (1) ☐ a business organization, form unknown
(2) ☐ a corporation
(3) ☐ an unincorporated entity (describe):
(4) ☐ a public entity (describe):
(5) ☐ other (specify):
- ☐ Information about additional defendants who are not natural persons is contained in Attachment 5.
6. The true names of defendants sued as Does are unknown to plaintiff.
- a. ☒ Doe defendants (specify Doe numbers): 1 to 20, inclusive were the agents or employees of other named defendants and acted within the scope of that agency or employment.
- b. ☒ Doe defendants (specify Doe numbers): 1 to 20, inclusive are persons whose capacities are unknown to plaintiff.
7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):
8. This court is the proper court because
- a. ☐ at least one defendant now resides in its jurisdictional area.
b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.
c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.
d. ☐ other (specify):
9. ☐ Plaintiff is required to comply with a claims statute, and
- a. ☐ has complied with applicable claims statutes, or
b. ☐ is excused from complying because (specify):

SHORT TITLE: Vazquez v. Dejong, et al.

CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each (*each complaint must have one or more causes of action attached*):

- a. ☒ Motor Vehicle
- b. ☐ General Negligence
- c. ☐ Intentional Tort
- d. ☐ Products Liability
- e. ☐ Premises Liability
- f. ☐ Other (*specify*):

11. Plaintiff has suffered

- a. ☒ wage loss
- b. ☒ loss of use of property
- c. ☒ hospital and medical expenses
- d. ☒ general damage
- e. ☒ property damage
- f. ☒ loss of earning capacity
- g. ☐ other damage (*specify*):

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12.
- b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☐ punitive damages

The amount of damages is (*in cases for personal injury or wrongful death, you must check (1)*):

- (1) ☒ according to proof
- (2) ☐ in the amount of: \$ 0 . 00

15. ☐ The paragraphs of this complaint alleged on information and belief are as follows (*specify paragraph numbers*):

Date: August 17, 2017

Liana Georgy

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

SHORT TITLE: Vazquez v. Dejong, et al.

CASE NUMBER:

First _____ CAUSE OF ACTION—Motor Vehicle
(number)ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint

(Use a separate cause of action form for each cause of action.)

Plaintiff (name): Ramiro Munoz Vazquez, an individual

MV-1. Plaintiff alleges the acts of defendants were negligent; the acts were the legal (proximate) cause of injuries and damages to plaintiff; the acts occurred

on (date): or around November 5, 2016

at (place): On or around I-5 Freeway near Charter Way, in the City of Stockton, County of San Joaquin, State of California.

MV-2. DEFENDANTS

a. ☒ The defendants who operated a motor vehicle are (names): Joshua Adam Dejong, an individual and☒ Does 1 _____ to 20, inclusiveb. ☒ The defendants who employed the persons who operated a motor vehicle in the course of their employment are (names): Stockton Police Department, a public entity, City of Stockton, a public entity, and☒ Does 1 _____ to 20, inclusivec. ☒ The defendants who owned the motor vehicle which was operated with their permission are (names): Stockton Police Department, a public entity, City of Stockton, a public entity, and☒ Does 1 _____ to 20, inclusived. ☒ The defendants who entrusted the motor vehicle are (names): Stockton Police Department, a public entity, City of Stockton, a public entity, and☒ Does 1 _____ to 20, inclusivee. ☒ The defendants who were the agents and employees of the other defendants and acted within the scope of the agency were (names): Joshua Adam Dejong, an individual and☒ Does 1 _____ to 20, inclusivef. ☐ The defendants who are liable to plaintiffs for other reasons and the reasons for the liability are
☐ listed in Attachment MV-2f ☐ as follows:☐ Does _____ to _____

COPY

PLD-PI-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): MARC J. BOURGET, Esq., CSB#91848 P.O. Box 4666; Stockton, California 95204 4545 Georgetown Place, Ste. A-1 Stockton, California 95207 TELEPHONE NO: 209-942-2002 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff, Hector Munoz	FOR COURT USE ONLY <div style="text-align: center; font-size: 1.2em; font-weight: bold;">FILED</div> <div style="text-align: center; font-size: 1.1em;">17 SEP 22 AM 8:02</div> <div style="text-align: center; font-size: 0.9em;">ROSA JUNQUEIRO, CLERK STEPHANIE CEJA BY _____ DEPUTY</div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN STREET ADDRESS: 180 E. Weber Avenue MAILING ADDRESS: P.O. Box 201022, Stockton, CA., 95201 CITY AND ZIP CODE: Stockton, California 95202 BRANCH NAME: STOCKTON BRANCH	THIS CASE HAS BEEN ASSIGNED TO JUDGE BARBARA A. KRONLUND IN DEPARTMENT 10D FOR ALL PURPOSES, INCLUDING TRIAL
PLAINTIFF: HECTOR MUNOZ DEFENDANT: CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT, and <input checked="" type="checkbox"/> DOES 1 TO 20	
COMPLAINT—Personal Injury, Property Damage, Wrongful Death <input type="checkbox"/> AMENDED (Number): Type (check all that apply): <input checked="" type="checkbox"/> MOTOR VEHICLE <input type="checkbox"/> OTHER (specify): <input checked="" type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death <input checked="" type="checkbox"/> Personal Injury <input type="checkbox"/> Other Damages (specify):	
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input checked="" type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited	CASE NUMBER: <div style="text-align: right; font-family: cursive;"> STK-CV- <u>LAT</u>-2017- <u>10030</u> JUDGE KRONLUND DEPT 10D </div>

1. Plaintiff (name or names): **HECTOR MUNOZ**

alleges causes of action against defendant (name or names):

CITY OF STOCKTON, STOCKTON POLICE DEPARTMENT and Does 1 to 102. This pleading, including attachments and exhibits, consists of the following number of pages: **5**

3. Each plaintiff named above is a competent adult

a. ☐ except plaintiff (name):(1) ☐ a corporation qualified to do business in California(2) ☐ an unincorporated entity (describe):(3) ☐ a public entity (describe):(4) ☐ a minor ☐ an adult(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed(b) ☐ other (specify):(5) ☐ other (specify):b. ☐ except plaintiff (name):(1) ☐ a corporation qualified to do business in California(2) ☐ an unincorporated entity (describe):(3) ☐ a public entity (describe):(4) ☐ a minor ☐ an adult(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed(b) ☐ other (specify):(5) ☐ other (specify):☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

SHORT TITLE:

MUNOZ vs CITY OF STOCKTON et al,

CASE NUMBER:

4. ☐ Plaintiff (name):

is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

a. ☒ except defendant (name): City of Stockton, CA.(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☒ a public entity (describe):

Incorporated City/Municipality

(5) ☐ other (specify):c. ☐ except defendant (name):(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):b. ☐ except defendant (name):(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):d. ☐ except defendant (name):(1) ☐ a business organization, form unknown(2) ☐ a corporation(3) ☐ an unincorporated entity (describe):(4) ☐ a public entity (describe):(5) ☐ other (specify):☐ Information about additional defendants who are not natural persons is contained in Attachment 5.

6. The true names of defendants sued as Does are unknown to plaintiff.

a. ☒ Doe defendants (specify Doe numbers): 1-3 were the agents or employees of other named defendants and acted within the scope of that agency or employment.b. ☒ Doe defendants (specify Doe numbers): 4-6 are persons whose capacities are unknown to plaintiff.7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

a. ☐ at least one defendant now resides in its jurisdictional area.b. ☒ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.d. ☐ other (specify):9. ☒ Plaintiff is required to comply with a claims statute, anda. ☒ has complied with applicable claims statutes, orb. ☐ is excused from complying because (specify):

SHORT TITLE:

MUNOZ vs CITY OF STOCKTON et al,

CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each (*each complaint must have one or more causes of action attached*):

- a. ☒ Motor Vehicle
- b. ☒ General Negligence
- c. ☐ Intentional Tort
- d. ☐ Products Liability
- e. ☐ Premises Liability
- f. ☐ Other (*specify*):

11. Plaintiff has suffered

- a. ☒ wage loss
- b. ☒ loss of use of property
- c. ☒ hospital and medical expenses
- d. ☒ general damage
- e. ☒ property damage
- f. ☐ loss of earning capacity
- g. ☐ other damage (*specify*):

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12.
- b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. **Plaintiff prays** for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☐ punitive damages

The amount of damages is (*in cases for personal injury or wrongful death, you must check (1)*):

- (1) ☒ according to proof
- (2) ☐ in the amount of: \$

15. ☒ The paragraphs of this complaint alleged on information and belief are as follows (*specify paragraph numbers*):

10, 11

Date: September 21, 2017

MARC J. BOURGET, Esq., CSB#91848

(TYPE OR PRINT NAME)

 **Marc Bourget**

(SIGNATURE OF PLAINTIFF OR ATTORNEY)



SHORT TITLE: MUNOZ vs CITY OF STOCKTON	CASE NUMBER:
---	--------------

FIRST CAUSE OF ACTION—Motor Vehicle

(number)

ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint

(Use a separate cause of action form for each cause of action.)

Plaintiff (name): Hector Munoz

MV- 1. Plaintiff alleges the acts of defendants were negligent; the acts were the legal (proximate) cause of injuries and damages to plaintiff; the acts occurred

on (date): 11/21/2016

at (place):

I-5 Northbound On-ramp at Matthew's Road.

MV- 2. DEFENDANTSa. ☒ The defendants who operated a motor vehicle are (names):☒ Does 7 to 10b. ☐ The defendants who employed the persons who operated a motor vehicle in the course of their employment are (names):☐ Does toc. ☒ The defendants who owned the motor vehicle which was operated with their permission are (names):
City of Stockton, operated by Stockton Police Department☒ Does 11 to 13d. ☒ The defendants who entrusted the motor vehicle are (names):☒ Does 14 to 16e. ☒ The defendants who were the agents and employees of the other defendants and acted within the scope of the agency were (names):☒ Does 17 to 20f. ☐ The defendants who are liable to plaintiffs for other reasons and the reasons for the liability are
☐ listed in Attachment MV-2f ☐ as follows:☐ Does to

Page 4

COPY

PLD-PI-001(2)

SHORT TITLE:
MUNOZ vs CITY OF STOCKTON

CASE NUMBER:

SECOND
(number)

CAUSE OF ACTION—General Negligence

Page 5

ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name): Hector Munoz

alleges that defendant (name): City of Stockton, (Respondent Superior)

☒ Does 1 to 20

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff

on (date): 11/21/2016

at (place): I-5 Northbound On-ramp at Matthew's Road.

(description of reasons for liability):

Defendant's employee was operating a patrol vehicle on or about 11/21/2016, at the intersection of the I-5 On-ramp at Matthews Road, French Camp. Distracted and looking down, in violation of VC §21453A, the employee turned left and unlawfully interfered with the right of way of another vehicle, turning left in front of it causing the collision.

As a proximate result of the collision caused by defendants' negligence, Plaintiff, was injured to the extent he was required to seek medical treatment and has experienced pain and suffering as a result.

Plaintiff is uncertain and unaware of the full nature and extent of her damages at this time and reserves leave to amend this complaint/cause of action, when the same are ascertained.

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2 **LATEEF H. GRAY, ESQ., SBN 250055**
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11 Attorneys for Plaintiffs
12 M.C.F. and K.S.F., by and through their Guardian Ad Litem
13 ELIZABETH CASAS BAUTISTA and THE ESTATE OF
14 COLBY FRIDAY by and through its personal representative
15 DENISE HALL

16
17
18 **UNITED STATES DISTRICT COURT**
19 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
20

21 M.C.F. by and through his Guardian Ad Litem
22 ELIZABETH CASAS BAUTISTA, individually
23 and as successor-in-interest to Decedent COLBY
24 FRIDAY; K.S.F., by and through her Guardian
25 Ad Litem ELIZABETH CASAS BAUTISTA,
26 individually and as successor-in-interest to
27 Decedent COLBY FRIDAY; THE ESTATE OF
COLBY FRIDAY, by and through its personal
representative DENISE FRIDAY HALL,

Plaintiffs,

v.

CITY OF STOCKTON, a municipal corporation;
STOCKTON POLICE DEPARTMENT, a public
entity; POLICE CHIEF ERIC JONES,
individually and in his official capacity as Chief
of the Stockton Police Department; DAVID
WELLS, individually and in his capacity as an
Officer for the Stockton Police Department; and
DOES 1-50, inclusive, individually and in their

CASE NO.:

COMPLAINT FOR DAMAGES
(42 U.S.C. Section 1983 and pendent tort
claims)

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES

official capacities as police officers for the
Stockton Police Department,

Defendants.

INTRODUCTION

1. This case arises out of the wrongful death of Colby Friday. On the afternoon of August 16, 2016, Mr. Friday was targeted, chased down, shot, and killed, without lawful cause or legal justification, by City of Stockton Police Officer David Wells.

2. This civil rights and wrongful death action seeks compensatory and punitive damages from Defendants for violating various rights under the United States Constitution and California state law in connection with the fatal police shooting of Decedent, Colby Friday.

JURISDICTION AND VENUE

3. This action arises under Title 42 of the United States Code Section 1983. Title 28 of the United States Code Sections 1331 and 1343 confers jurisdiction upon this Court. The unlawful acts and practices alleged herein occurred in the City of Stockton, San Joaquin County, California, which is within the judicial district of this Court.

4. The supplemental jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1367 over the state law claims, which are so related to federal claims in this action that they form part of the same case or controversy under Article III of the Constitution of the United States of America.

5. Venue is proper in this Court under 28 U.S.C. Section 1391(b) because Defendants are believed to reside in this district and all incidents, events, and occurrences giving rise to this action occurred in this district.

PARTIES

6. Decedent COLBY FRIDAY (hereinafter "Decedent") was an individual residing in the State of California. Decedent was unmarried at the time of his death and died intestate. Decedent did not file any legal actions prior to his death. To the extent that this action seeks to recover damages for the violation of rights personal to Decedent, this action is maintained by

1 THE ESTATE OF COLBY FRIDAY by and through its personal representative DENISE
2 FRIDAY HALL, Decedent's biological mother.

3 7. Plaintiff THE ESTATE OF COLBY FRIDAY seeks to recover damages for the
4 violation of rights personal to Decedent, this action is maintained by and through its personal
5 representative DENISE HALL.

6 8. Plaintiff M.C.F. ("Plaintiff M.C.F."), is and was at all times herein mentioned the
7 biological son of Decedent. M.C.F. sues in his individual capacity and as Successor-in-Interest
8 to Decedent by and through his Guardian Ad Litem ELIZABETH CASAS BAUTISTA.

9 9. Plaintiff K.S.F. ("Plaintiff K.S.F."), is and was at all times herein mentioned the
10 biological daughter of Decedent COLBY FRIDAY. K.S.F. sues in her individual capacity and
11 as Successor-in-Interest to Decedent by and through her Guardian Ad Litem, ELIZABETH
12 CASAS BAUTISTA.

13 10. Defendant CITY OF STOCKTON (hereinafter "City") is an incorporated public
14 entity duly authorized and existing as such in and under the laws of the State of California; and
15 at all times herein mentioned, Defendant City has possessed the power and authority to adopt
16 policies and prescribe rules, regulations and practices affecting the operation of the Stockton
17 Police Department and its tactics, methods, practices, customs and usage. At all relevant times,
18 Defenadnt City was the employer of Defendant David Wells and all DOES Defendants,
19 individually and as peace officers.

20 11. Defendant STOCKTON POLICE DEPARTMENT ("SPD") is a division of the
21 City of Stockton, which at all times was operated, managed, maintained, supervised and
22 controlled by the CITY and which is a governmental organization of the State of California.

23 12. At all times herein mentioned, Defendant POLICE CHIEF ERIC JONES
24 ("CHIEF JONES"), was the Stockton Police Department Chief, and is sued in his individual
25 capacity, and in his capacity as Chief of the Stockton Police Department. Chief Jones was
26 the offical highest in the chain of command in the Stockton Police Department and was the
27 highest supervising policymaker in the Stockton Police Department.

1 13. At all times mentioned herein, Defendant Officer DAVID WELLS ("Defendant
2 WELLS"), is sued in his individual capacity and in his capacity as an officer for the Stockton
3 Police Department.

4 14. At all times herein mentioned, Defendants CHIEF JONES, DAVID WELLS and
5 DOES 1-50 acted under color of state law and within the course and scope of their employment
6 with the CITY and the Stockton Police Department.

7 15. Plaintiffs are ignorant of the true names and capacities of Defendants DOES 1
8 through 25, inclusive, and therefore sue these defendants by such fictitious names. Plaintiffs
9 allege that Defendants DOES 1 through 25 violated Decedent's civil rights, wrongfully caused
10 his death, and/or encouraged, directed, enabled and/or ordered defendants to engage in such
11 conduct. Plaintiffs further allege that the DOES Defendants violated Plaintiffs' Fourteenth
12 Amendment rights to familial association and companionship and caused the wrongful death of
13 Decedent. Plaintiffs will amend their Complaint to state the true names and capacities of DOES
14 1 through 25, inclusive, when they have been ascertained.

15 16. Plaintiffs are ignorant of the true names and capacities of Defendants DOES 26-
16 50, inclusive, and therefore sue these defendants by such fictitious names. Plaintiffs are
17 informed and believe and thereon allege that each Defendant so named was employed by
18 Defendant City at the time of the conduct alleged herein. Plaintiffs allege that each of
19 Defendants DOES 26-50 were responsible for the training, supervision and/or conduct of the
20 police officers and/or agents involved in the conduct alleged herein. Plaintiffs allege that each
21 of Defendants DOES 26 through 50 was also responsible for and caused the acts and injuries
22 alleged herein. Plaintiffs will amend their Complaint to state the true names and capacities of
23 DOES 26 through 50, inclusive, when they have been ascertained.

24 17. At all relevant times, DOES Defendants, individually and as a peace officers;
25 were duly authorized employees and agents of Defendant CITY, who were acting under color of
26 law within the course and scope of their respective duties as police officers and within the
27 complete authority and ratification of their principal, Defendant CITY.

1 18. At all relevant times, Defendants, individually and as peace officers, were duly
2 appointed officers and/or employees or agents of Defendant CITY, subject to oversight and
3 supervision by Defendant CITY's elected and non-elected officials.

4 19. In doing the acts and failing and omitting to act as hereinafter described,
5 Defendants, individually and as peace officers, were acting on the implied and actual permission
6 and consent of the Defendant CITY.

7 20. At all times mentioned herein, each and every CITY defendant was the agent of
8 each and every other CITY defendant and had the legal duty to oversee and supervise the hiring,
9 conduct and employment of each and every CITY defendant.

10 **ADMINISTRATIVE PREREQUISITES**

11 21. Plaintiffs are required to comply with an administrative tort claim requirement
12 under California law. Plaintiffs have exhausted all administrative remedies pursuant to
13 California Government Code Section 910. Plaintiffs filed an administrative claim with the
14 CITY OF STOCKTON on February 16, 2017. The claim was rejected by the CITY OF
15 STOCKTON on April 3, 2017.

16 **PRELIMINARY ALLEGATIONS**

17 22. The City of Stockton is a public entity and is being sued under Title 42 U.S.C.
18 Section 1983 for violations of the Fourth and Fourteenth Amendments of the United States
19 Constitution, California state law, the California Tort Claims Act, and the California
20 Government Code for the acts and omissions of Defendant Wells, Chief Jones and DOES 1-25,
21 and each of them, who at the time they caused Plaintiffs' and Decedent's injuries, damages and
22 death were duly appointed, qualified and acting officers, employees, and/or agents of City and
23 acting within the course and scope of their employment and/or agency.

24 23. Plaintiffs allege that the conduct of each defendant deprived Decedent of his
25 constitutional right to life and caused Decedent to suffer grievous harm prior to his death.

26 24. Each of the Defendants caused and is responsible for the unlawful conduct and
27
28

1 resulting harm by, inter alia: personally participating in the conduct; or acting jointly and in
2 concert with others who did so; by authorizing, acquiescing, condoning, acting, omitting or
3 failing to take action to prevent the unlawful conduct; by promulgating or failing to promulgate
4 policies and procedures pursuant to which the unlawful conduct occurred; by failing and refusing
5 to initiate and maintain proper and adequate policies, procedures and protocols; and by ratifying
6 and condoning the unlawful conduct performed by agents and officers under their direction and
7 control.

8 25. Whenever and wherever reference is made in this Complaint to any act by
9 Defendants DOES 1-50, such allegations and references shall also be deemed to mean the acts
10 and failures to act of each DOE Defendant individually, jointly or severally.

11 MONELL ALLEGATIONS

12 26. Based upon the principles set forth in *Monell v. New York City Department of*
13 *Social Services*, 436 U.S. 658 (1978), Defendant City is liable for all injuries sustained by
14 Plaintiffs as set forth herein. Defendant City bears liability because its policies, practices and/or
15 customs were a cause of Decedent's death and Plaintiffs' injuries. Defendant City and its
16 officials maintained or permitted one or more of the following official policies or customs:

- 17 a) Failure to provide adequate training and supervision to police officers with
18 respect to constitutional limits on the use of deadly force;
- 19 b) Failure to provide adequate training and supervision to police officers with
20 respect to constitutional limits on the use of force, arrest, search, and detention;
- 21 c) Failure to adequately discipline or retrain officers involved in misconduct;
- 22 d) Selection, retention, and assignation of officers with demonstrable propensities
23 for excessive force, violence, dishonesty, and other misconduct;
- 24 e) Encouragement of officers in the belief that they can violate the rights of persons,
25 such as Decedent and Plaintiffs, with impunity, and that such conduct will not adversely affect
26 their opportunities for promotion and other employment benefits;

1 f) Ratification by the highest levels of authority of the specific unconstitutional acts
2 alleged in this Complaint and, in particular, the ratification of the unjustified shooting of
3 Decedent.

4 **FACTUAL ALLEGATIONS**

5 27. On the afternoon of August 16, 2016, around 2:00 pm, Stockton Police Officers
6 found Decedent COLBY FRIDAY, walking peacefully at or near Jamestown Street and Sousa
7 Street in the city of Stockton, in San Joaquin County, California. It is unclear as to the reason
8 the officers confronted Decedent.

9 28. Defendants WELLS and DOES 1-25 from the Stockton Police Department
10 arrived at the scene. When the officers arrived, they saw Decedent walking on the sidewalk,
11 leaving the area. Defendant WELLS approached Decedent as Decedent was walking.

12 29. Defendant WELLS immediately starting chasing Decedent. Not understanding the
13 reason that the defendant officers were aggressively running at him, Decedent began running as
14 well.

15 30. Decedent ran around a nearby building and approached a locked gate, which was
16 behind the building and located next to an apartment complex. Defendant WELLS followed
17 Decedent and seconds later inexplicably fired several shots at Decedent, striking him multiple
18 times. Decedent COLBY FRIDAY died as a result of the injuries sustained during this
19 encounter with Defendant WELLS and Defendant DOES 1-25 from the Stockton Police
20 Department.

21 31. On information and belief, Decedent had not committed any crime. Defendants,
22 individually and as peace officers, had neither reasonable suspicion to detain Decedent nor
23 probable cause to arrest him.

24 32. On information and belief, Defendant WELLS violated the policies of Defendants
25 CITY and the STOCKTON POLICE DEPARTMENT as he failed to activate his department
26 issued body camera until after he had shot Decedent.

27 33. Defendants, individually and as peace officers, while acting in the course and
28 scope of their employment with CITY, negligently assessed the circumstances presented to

1 them and violently confronted Decedent COLBY FRIDAY without having probable cause to
2 believe that Decedent had committed a violent felony, or would commit a violent felony in the
3 future.

4 34. Without warning, Defendant WELLS chased the Decedent down, then repeatedly
5 and unjustifiably discharged several gunshots from his department-issued firearm. Decedent
6 COLBY FRIDAY died as a proximate and direct cause of gunshot wounds.

7 35. At no time during the course of these events did Decedent COLBY FRIDAY pose
8 any reasonable threat of violence to the defendant officers or any other individual, nor did he do
9 anything to justify the use of deadly, excessive, unreasonable, unlawful and unnecessary force
10 against him, by the defendant officers.

11 36. Both prior to and during the time in which Decedent was shot to death by
12 defendants, Decedent made no aggressive movements and no furtive gestures that would cause
13 an officer to reasonably believe Decedent had the will, or the ability, to inflict substantial bodily
14 harm against any individual or officer.

15 37. Plaintiffs allege that a reasonable officer in Defendant Wells' position would have
16 clearly been on notice that Decedent did not pose a threat of harm to anyone at the time that he
17 needlessly shot him to death.

18 38. The actions and omissions of Defendant City, Defendant Wells, Chief Jones and
19 the DOE Defendant Stockton Police Department Officers was objectively unreasonable under
20 the circumstances, without legal justification or other legal right, done under color of law,
21 within the course and scope of their employment as law enforcement officers and/or or public
22 officials, and pursuant to unconstitutional customs, policies and procedures of Defendant City
23 and/or other jurisdictions.

24 39. Plaintiffs are informed and believe and thereon allege that members of the
25 Stockton Police Department, including, but not limited to Defendant Wells, Chief Jones and
26 DOES 1-25 and/or each of them, have individually and/or while acting in concert with one
27 another, engaged in a repeated pattern and practice of using excessive, arbitrary and/or
unreasonable force against individuals, including, but not limited to Decedent.

42. Plaintiffs are informed and believe and thereon allege that Defendant City, Chief Jones and DOES 26-50, inclusive, breached their duty of care to the public in that they have failed to discipline Defendant Wells and/or DOES 1-25. Their failure to discipline Defendant Wells and/or DOES 1-25 inclusive, demonstrates the existence of an entrenched culture, policy or practice of promoting, tolerating and/or ratifying with deliberate indifference the making of improper detentions and arrests, the use of excessive and/or deadly force and the fabrication of official reports to cover up DOES 1-25's inclusive, misconduct.

43. As a consequence of Defendants' violation of Plaintiffs' federal civil rights under 42 U.S.C. §1983 and the Fourth and Fourteenth Amendments, Plaintiffs were mentally, and emotionally injured and damaged as a proximate result of Decedent's wrongful death, including but not limited to: Plaintiffs' loss of familial relations, Decedent's society, comfort, protection, companionship, love, affection, solace, and moral support and financial support.

45. Plaintiffs are further entitled to recover damages incurred by Decedent before he died as a result of being deprived without due process of his right to life, and to any penalties or punitive damages to which Decedent would have been entitled to recover had he lived.

1 including damages incurred by Decedent consisting of pain and suffering he endured as a result
2 of the violation of his civil rights.

3 46. Plaintiffs found it necessary to engage the services of private counsel to vindicate
4 the rights of Decedent and Plaintiffs' rights under the law. Plaintiffs are therefore entitled to an
5 award of attorneys' fees and/or costs pursuant to statute(s) in the event that they are the
6 prevailing party in this action under 42 U.S.C. § 1983, 1985-86 and 1988.

7 **FIRST CAUSE OF ACTION**

8 **(42 U.S.C. §1983)**

9 **(Survival Action: Excessive Force)**

10 **(Plaintiff ESTATE OF COLBY FRIDAY against Defendants WELLS and DOES 1-25)**

11 47. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1 through 46
12 of this Complaint.

13 48. The foregoing claim for relief arose in Decedent's favor and Decedent would
14 have been the Plaintiff with respect to this claim if he had lived.

15 49. Defendants' unjustified shooting deprived Decedent of his right to be secure in his
16 person against unreasonable searches and seizures as guaranteed to Decedent under the Fourth
17 Amendment to the United States Constitution and applied to state actors by the Fourteenth
18 Amendment.

19 50. As a result, Decedent suffered extreme pain and suffering and eventually suffered
20 a loss of life and earning capacity.

21 51. The use of deadly force was excessive and unreasonable under the circumstances,
22 especially since Decedent never injured or attempted to injure any officer or any other person.
23 Moreover, Decedent was unarmed while he posed no threat of harm. Defendants' actions thus
24 deprived Decedent of his right to be free from unreasonable searches and seizures under the
25 Fourth Amendment and applied to state actors by the Fourteenth Amendment.

26 52. The conduct of Defendants was willful, wanton, malicious, and done with
27 reckless disregard for the rights and safety of Decedent.

28 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

29 COMPLAINT FOR DAMAGES

SECOND CAUSE OF ACTION

(Violation of Plaintiffs' 14th Amendment Rights/Right to Familial Relationship-42 U.S.C. § 1983)

(Plaintiffs M.C.F. and K.S.F., by and through their Guardian Ad Litem ELIZABETH CASAS BAUTISTA against Defendants WELLS and DOES I-50)

53. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1 through 52 of this Complaint as though fully set forth.

54. Plaintiffs M.C.F. and K.S.F. had a cognizable interest under the Due Process Clause of the Fourteenth Amendment of the United States Constitution to be free from state actions that deprive them of life, liberty, or property in a manner as to shock the conscience, including but not limited to, unwarranted state interference in Plaintiffs' familial relationship with their father, Decedent Colby Friday.

55. As a result of the excessive force by Defendants, Decedent died. Plaintiffs were thereby deprived of their constitutional right of familial relationship with Decedent.

56. Defendants, acting under color of state law, thus violated the Fourteenth Amendment rights of Plaintiffs to be free from unwarranted interference with their familial relationship with Decedent.

57. The aforementioned actions of Defendants, along with other undiscovered conduct, shock the conscience, in that they acted with deliberate indifference to the constitutional rights of both Decedent and Plaintiffs, and acted with purpose to harm, unrelated to any legitimate law enforcement objective.

58. Defendant, acting under color of state law, thus violated the Fourteenth Amendment rights of Decedent and Plaintiffs.

59. As a direct and proximate cause of the acts of Defendants, Decedent experienced severe pain and suffering and lost his life and earning capacity. Plaintiffs suffered extreme and severe mental anguish and pain and have been injured in mind and body. Plaintiffs have also been deprived of the life-long love, companionship, comfort, support, society, care and sustenance of Decedent and will continue to be so deprived for the remainder of their natural lives.

COMPLAINT FOR DAMAGES

1 60. As a result of the conduct of Defendants, they are liable for Decedent's injuries,
2 either because they were integral participants in the denial of due process, or because they failed
3 to intervene to prevent these violations.

4 61. The conduct of Defendants was willful, wanton, malicious, and done with
5 reckless disregard for the rights and safety of Decedent and Plaintiffs.

6 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

7 **THIRD CAUSE OF ACTION**

8 **Monell-Municipal Liability for Unconstitutional Custom or Policy - 42 U.S.C. § 1983**
9 **(Plaintiffs M.C.F. and K.S.F., by and through their Guardian Ad Litem ELIZABETH**
10 **CASAS BAUTISTA and ESTATE OF COLBY FRIDAY against Defendants CHIEF**
11 **JONES, CITY, STOCKTON POLICE DEPARTMENT and DOES 26-50)**

12 62. Plaintiffs re-allege and incorporate by reference herein paragraphs 1 through 61 of
13 this Complaint.

14 63. On information and belief, Defendant WELLS and DOES 1-25's conduct,
15 individually and as peace officers, who shot decedent to death, was ratified by CITY's police
16 department supervisory officers Chief Jones and DOES 26-50.

17 64. On information and belief, Defendants were not disciplined for the killing of
18 Decedent.

19 65. On and for some time prior to August 16, 2016, (and continuing to the present
20 day) Defendants, individually and as peace officers, deprived Plaintiffs and Decedent of the
21 rights and liberties secured to them by the Fourth and Fourteenth Amendment to the United
22 States Constitution, in that said defendants and their supervising and managerial employees,
23 agents, and representatives, acting with gross negligence and with reckless and deliberate
24 indifference to the rights and liberties of the public in general, and of Plaintiffs and Decedent,
25 and of persons in their class, situation and comparable position in particular, knowingly
26 maintained, enforced and applied an official recognized custom, policy, and practice of:

- 27 a. Employing and retaining as police officers and other personnel, including
Defendants, individually and as peace officers; who at all times material
herein knew or reasonably should have known had dangerous propensities

- 1 for abusing their authority and for mistreating citizens by failing to follow
2 written CITY Police Department policies, including the use of excessive
3 and deadly force;
- 4 b. Of inadequately supervising, training, controlling, assigning, and
5 disciplining CITY Police officers, and other personnel, including
6 Defendants who CITY knew or in the exercise of reasonable care should
7 have known had the aforementioned propensities and character traits,
8 including the propensity for violence and the use of excessive force;
- 9 c. By maintaining grossly inadequate procedures for reporting, supervising,
10 investigating, reviewing, disciplining and controlling the intentional
11 misconduct by Defendants who are Police Officers of CITY;
- 12 d. By failing to discipline CITY Police Officers' conduct, including but not
13 limited to, unlawful detention and excessive and deadly force;
- 14 e. By ratifying the intentional misconduct of Defendants and other officers
15 who are Police Officers of CITY;
- 16 f. By having and maintaining an unconstitutional policy, custom and practice
17 of detaining and arresting individuals without probable cause or
18 reasonable suspicion, and using excessive force, including deadly force,
19 which also is demonstrated by inadequate training regarding these
20 subjects. The policies, customs and practices of Defendants were done
21 with a deliberate indifference to individuals' safety and rights; and
- 22 g. By failing to properly investigate claims of unlawful detention and
23 excessive force by CITY Police Officers.

24 66. By reason of the aforementioned policies and practices of Defendants,
25 individually and as peace officers, Decedent was severely injured and subjected to pain and
26 suffering and lost his life and earning capacity for which Plaintiffs are entitled to recover
27 damages.

1 67. Defendants, individually and as peace officers, together with various other
2 officials, whether named or unnamed, had either actual or constructive knowledge of the
3 deficient policies, practices and customs alleged in the paragraphs above. Despite having
4 knowledge as stated above these defendants condoned, tolerated and through actions and
5 inactions thereby ratified such policies. Said defendants also acted with deliberate indifference
6 to the foreseeable effects and consequences of these policies with respect to the constitutional
7 rights of decedent, Plaintiff, and other individuals similarly situated.

8 68. By perpetrating, sanctioning, tolerating and ratifying the outrageous conduct and
9 other wrongful acts, Defendants, individually and as peace officers, acted with an intentional,
10 reckless, and callous disregard for the life of Decedent. Each of their actions was willful,
11 wanton, oppressive, malicious, fraudulent, and extremely offensive and unconscionable to any
12 person of normal sensibilities.

13 69. Furthermore, the policies, practices, and customs implemented, maintained and
14 still tolerated by Defendants, individually and as peace officers, were affirmatively linked to
15 and were significantly influential force behind the injuries of Decedent and Plaintiffs.

16 70. By reason of the aforementioned acts and omissions of Defendants, individually
17 and as peace officers, Plaintiffs were caused to incur funeral and related burial expenses, loss of
18 gifts and benefits and loss of financial support.

19 71. By reason of the aforementioned acts and omissions of Defendants, individually
20 and as peace officers, Plaintiffs have suffered loss of love, companionship, affection, comfort,
21 care, society, and future support.

22 72. Accordingly, Defendants, individually and as peace officers, each are liable to
23 Plaintiffs for compensatory damages under 42 U.S.C. § 1983.

24 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

25 **FOURTH CAUSE OF ACTION**

26 **(Wrongful Death-Negligence)**

27 **(C.C.P. §377.60 and 377.61)**

(Plaintiffs M.C.F. and K.S.F., by and through their Guardian Ad Litem ELIZABETH

CASAS BAUTISTA against Defendants WELLS and DOES 1-25)

73. Plaintiffs re-allege and incorporate by reference herein paragraphs 1 through 72 of this Complaint, except for any and all allegations of intentional, malicious, extreme, outrageous, wanton, and oppressive conduct by defendants, and any and all allegations requesting punitive damages.

74. Defendant Wells and DOES 1-25 shot and killed Decedent despite the absence of a threat to any defendant officer or any other person. Because Decedent died intestate and unmarried, Plaintiffs M.C.F. and K.S.F. are the proper people to sue for his wrongful death under California state law.

75. Defendants' negligent actions and/or negligent failure to act within the scope and course of their employment with Defendant City, as set forth above, proximately caused the death of Decedent.

76. As an actual and proximate result of said Defendants' negligence, and the death of Decedent, Plaintiffs have sustained pecuniary loss resulting from the loss of comfort, society, attention, services, and support of their father, Decedent, in an amount according to proof at trial.

77. As a further actual and proximate result of said defendants' negligence, Plaintiffs incurred funeral and burial expenses, in an amount according to proof at trial.

78. Pursuant to California C.C.P. Sections 377.60 and 377.61, Plaintiffs have brought this action, and claims damages from said Defendants for the wrongful death of Decedent, and the resulting injuries and damages.

WHEREFORE, Plaintiffs prays for relief as hereinafter set forth.

FIFTH CAUSE OF ACTION

(Violation of CALIFORNIA CIVIL CODE §52.1)

**(Plaintiffs M.C.F. and K.S.F., by and through their Guardian Ad Litem
ELIZABETH CASAS BAUTISTA and ESTATE OF COLBY FRIDAY
against Defendants WELLS and DOES 1-25)**

79. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 78 of this Complaint.

COMPLAINT FOR DAMAGES

1 80. Defendants' above-described conduct constituted interference, and attempted
2 interference, by threats, intimidation and coercion, with the Decedent's peaceable exercise and
3 enjoyment of rights secured by the Constitution and laws of the United States and the State of
4 California, in violation of California Civil Code § 52.1.

5 81. As a direct and proximate result of Defendants' violation of Civil Code § 52.1,
6 Decedent suffered violations of his constitutional rights, and suffered damages as set forth
7 herein.

8 82. Plaintiffs are entitled to injunctive relief and an award of their reasonable
9 attorney's fees pursuant to Civil Code § 52.1(h).

10 83. Plaintiff is entitled to treble damages, but in no case less than \$4,000.00 and an
11 award of reasonable attorney's fees pursuant to Civil Code § 52(a).

12 84. Under the provisions of California Civil Code § 52(b), Defendants are liable for
13 punitive damages for each violation of Civil Code § 52.1, reasonable attorney's fees and an
14 additional \$25,000.00.

15 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

16 **SIXTH CAUSE OF ACTION**

17 **(42 U.S.C. Section 1983)**

18 **(Survival Action: Denial of Medical Care)**

19 **(Plaintiff ESTATE OF COLBY FRIDAY against Defendants Wells and DOES 1-25)**

20 85. Plaintiffs hereby re-alleges and incorporates by reference herein paragraphs 1
21 through 84 of this Complaint.

22 86. The foregoing claim for relief arose in Decedent's favor and Decedent would
23 have been the Plaintiff with respect to this claim if he had lived.

24 87. The denial of medical care by Defendants deprived Decedent of his right to be
25 secure in his person against unreasonable searches and seizures as guaranteed to Decedent under
26 the Fourth Amendment to the United States Constitution and applied to state actors by the
27 Fourteenth Amendment.

88. As a result, Decedent suffered extreme pain and suffering and eventually suffered
a loss of life and earning capacity.

89. Defendants knew that failure to provide timely medical treatment to Decedent could result in further significant injury or the unnecessary and wanton infliction of pain, but disregarded that serious medical need, causing Decedent great bodily harm and death.

90. The conduct of Defendants was willful, wanton, malicious, and done with reckless disregard for the rights and safety of Decedent.

WHEREFORE, Plaintiffs prays for relief as hereinafter set forth.

JURY DEMAND

91. Plaintiffs hereby demand a jury trial in this action.

PRAYER

WHEREFORE, Plaintiffs prays for relief, as follows:

1. For general damages in a sum to be determined according to proof;
2. For special damages, including but not limited to, past, present and/or future wage loss, income and support, medical expenses and other special damages in a sum to be determined according to proof;
3. For funeral and burial expenses according to proof;
4. For punitive damages and exemplary damages in amounts to be determined according to proof as to defendants WELLS, and/or DOES 1 through 50 and/or each of them;
5. For reasonable attorney's fees pursuant to 42 U.S.C. § 1988 and U.S.C. Section 794a;
6. For cost of suit herein incurred;
7. For such other and further relief as the Court deems just and proper.

LAW OFFICES OF JOHN L. BURRIS

Dated: September 29, 2017

/s/ John L. Burris
JOHN L. BURRIS, ESQ
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JUAN FRANCISCO MARTINEZ, an
individual,

Plaintiff,

vs.

COUNTY OF LOS ANGELES; LOS
ANGELES COUNTY SHERIFF'S
DEPARTMENT; CITY OF STOCKTON;
STOCKTON POLICE DEPARTMENT;
COUNTY OF SAN JOAQUIN; SAN
JOAQUIN COUNTY SHERIFF'S
DEPARTMENT; and DOES 1-10, both
their individual & official capacities,

Defendants.

Case No.

COMPLAINT FOR
DAMAGES

1. 42 U.S.C. § 1983 - Fourth
Amendment / Wrongful
Incarceration;
2. 42 U.S.C. § 1983 - Fourteenth
Amendment / Wrongful
Incarceration;
3. Cal. Const. Art. I § 13 -
Wrongful Incarceration - LA
County;
4. False Imprisonment - LA
County.

DEMAND FOR JURY TRIAL

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1 **I. OVERVIEW.**

2 1. This action concerns the refusal of local criminal justice agencies to utilize
3 readily available information and existing identification systems to accurately identify the
4 subjects of warrants issued by the Los Angeles Superior Court, and to institute simple,
5 common-sense processes to insure that when a warrant issues, it identifies its subject by
6 the unique identifiers law enforcement created years ago to address the problem of
7 different persons sharing the same and/or similar names, birthdates, physical descriptors,
8 and the problems of persons using aliases, stealing others identities, etc. Related to this
9 are the agencies' indifference to instances where the same person is repeatedly arrested
10 on a warrant meant for another, an indifference that manifests itself by the agencies'
11 refusal to do anything to prevent the person's re-arrest on the same warrant
12 notwithstanding the agencies' knowledge, beforehand, that the person is *not* the warrant's
13 subject.
14

15 2. As a result, persons who are not the subject of warrants are not only arrested on
16 warrants meant for others, but can and are arrested again and again on the same warrants.
17 Moreover, whenever someone is arrested on a warrant, the warrant is removed from the
18 various data systems law enforcement uses to check for outstanding warrants. So if the
19 *wrong* person is arrested on the warrant, the warrant's intended subject will no longer
20 face arrest on the warrant. In other words, criminals get a free pass.
21

22 3. Plaintiff presents federal claims for relief that arise under 42 U.S.C. § 1983, and
23 supplemental state law claims actionable under the California constitution and false
24 imprisonment.
25

26 **II. JURISDICTION.**

27 4. Plaintiff's claims arise under 42 U.S.C. §1983. Accordingly, federal jurisdiction
28 is conferred upon this Court by 28 U.S.C. §§ 1331 and 1343. The Court has supplemental

1 jurisdiction over the state law claims under 28 U.S.C. § 1367(a).

2 5. Plaintiff's claims arise out of, *inter alia*, acts of the County of Los Angeles ("LA
3 County") and the Los Angeles County Sheriff's Department ("LASD"). Accordingly,
4 venue is proper within the Central District of California.

5 **III. PARTIES.**

6 **A. Plaintiff.**

7 6. Plaintiff Juan Francisco Martinez is, and was at all times relevant hereto, a
8 resident of the County of San Joaquin.
9

10 **B. Defendants.**

11 7. Defendant County of Los Angeles ("LA County") is a local governmental entity
12 organized and existing under the laws of the State of California. Defendant LASD is a
13 public entity within the meaning of California law, and is a LA County agency.

14 8. Defendant City of Stockton ("Stockton") is a municipal corporation organized
15 and existing under the laws of the State of California. Defendant Stockton Police
16 Department ("SPD") is a public entity within the meaning of California law, and is a
17 Stockton agency.
18

19 9. Defendant County of San Joaquin ("San Joaquin") is a local governmental entity
20 organized and existing under the laws of the State of California. Defendant San Joaquin
21 County Sheriff's Department ("SJSD") is a public entity within the meaning of California
22 law, and is a San Joaquin agency.

23 10. Plaintiff is ignorant of the true names and capacities of defendants sued herein
24 as DOES, and therefore sues these defendants by fictitious names. Plaintiff will give
25 notice of their true names and capacities when ascertained. Plaintiff is informed and
26 believes and thereon alleges that defendant DOES are responsible in some manner for the
27 damages and injuries hereinafter complained of.
28

1 11. The complained of acts and omissions were performed by persons within the
2 course and scope of employment with their respective employers, LA County, LASD,
3 Stockton, SPD, San Joaquin and SJSD. All acts and omissions were under color of state
4 law.

5 **IV. TOLLING.**

6 12. On January 30, 2013, claimant Mario Garcia, on behalf of himself and others
7 similarly situated, submitted a Cal. Gov't Code § 910 claim to LA County complaining
8 of wrongful acts and practices that caused the injuries of which Plaintiff Juan Francisco
9 Martinez also complains. See **Exhibit A**, true copy of the § 910 claim. By notice mailed
10 March 7, 2013, LA County rejected the claim. See **Exhibit B**, true copy of LA County's
11 rejection.
12

13 13. As a plaintiff suing on behalf of himself and those similarly situated, Mario
14 Garcia filed suit against LA County (and others) on April 5, 2013. The *Garcia* complaint
15 sought damages for a class of persons wrongly imprisoned in the Los Angeles County
16 jail. Plaintiff Juan Francisco Martinez was a member of the putative class. See Class
17 Action Complaints for Damages filed in *Mario Alberto Garcia v. County of Riverside et*
18 *al.*, U.S.D.C. No. EDCV13-616 JGL (SPx), doc. 1 (original complaint filed 4/5/13); doc.
19 10 (first amended complaint filed 4/30/13); doc. 33 (second amended complaint filed
20 8/14/13); doc. 50 (third amended complaint filed 10/25/13); doc. 101 (fourth amended
21 complaint filed 5/15/17).
22

23 14. The district court in the *Garcia* lawsuit denied class certification without
24 prejudice by order filed July 17, 2017 (doc. 116). Therefore, the statute of limitations on
25 Plaintiff Juan Francisco Martinez's federal claims asserted in the instant lawsuit were
26 tolled from the date of accrual up until July 17, 2017, and the time for filing suit on
27 Plaintiff Juan Francisco Martinez' state law claims against defendant LA County, was
28

1 tolled until July 17, 2017. *American Pipe & Construction Co. v. Utah*, 414 U.S. 538
2 (1974); *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345 (1983); *City of San Jose v.*
3 *Superior Court*, 12 Cal.3d 447 (1974).

4 **V. FACTS COMMON TO ALL CLAIMS.**

5 **A. Biometric Identifiers Matched To Fingerprints.**

6 15. Years ago, law enforcement developed means to reliably identify a person to
7 the exclusion of others who share the same or similar names, birthdates, physical
8 characteristics, and the like. One such means was the assignment of an unique numerical
9 identifier to a person matched to the person's fingerprints. Three such biometric
10 identifiers are described below:
11

12 A. *CII numbers*. The California Department of Justice ("CDOJ") assigns a
13 unique identifying number to every person booked into a California jail. This
14 number, called a "CII number," is matched to the arrestee's fingerprints. Unless
15 previously created, a CII number is generated upon a person's booking into any
16 California jail; thereafter, the same CII number is used for every subsequent
17 booking of that arrestee. CDOJ will record all subsequent bookings of that person
18 under the same CII number even if the person uses different names, birthdates,
19 social security numbers, driver's license numbers etc. CDOJ can do so because a
20 CII number is matched to the arrestee's fingerprints which, of course, are unique
21 and unchanging. CII numbers are also assigned to persons who, for reasons of
22 employment, must be fingerprinted and those prints reported to the CDOJ. For
23 instance, all California lawyers, judges and police officers have CII numbers.
24

25 B. A major use of CII number is for generating its subject's criminal history,
26 or "rap sheet," as maintained by the CDOJ. *People v. Martinez*, 22 Cal.4th 106,
27 121, 131 (2000) (example of how CII number was used to obtain a person's
28

1 criminal history). The criminal history will reflect the subject's known full name,
2 aliases, birthdate, residential addresses, the subject's unique identifiers, such as
3 social security, driver's license and FBI numbers (described below), along with the
4 subject's arrest, prosecution and conviction history, including sentences of
5 incarceration in a county jail or state prison.

6 C. *FBI numbers*. An FBI number is essentially the same as a CII number
7 only at the national level. The FBI assigns a unique number to an individual whose
8 arrest is reported to the FBI. Plaintiff is informed and believes and based thereon
9 alleges that anyone convicted in California of a felony, has the fact of that
10 conviction (date, charge, sentence, etc.) reported to the FBI. The FBI, Plaintiff is
11 informed, tracks all felony convictions from any jurisdiction within the United
12 States under a person's unique FBI number.

13 D. *LA Main numbers*. An LA Main number functions like a CII number,
14 except that the LA Main number tracks only Los Angeles County bookings,
15 prosecutions, convictions. As with CII numbers, LA Main numbers are supposed
16 to be unique to an individual as they are matched to a person's fingerprints. So no
17 two persons should share the same LA Main number, just as no two persons should
18 share the same CII number.
19

20
21 16. Plaintiff is informed and believes and based thereon allege that a set of
22 fingerprints is a more unique biometric identifier than DNA. That is, while identical twins
23 share the same DNA profile, the twins will nevertheless have non-matching fingerprints.

24 17. Plaintiff is informed and believes and based thereon allege that law
25 enforcement considers biometric identifiers like CII, FBI and LA Main numbers, to be
26 far more reliable for identification purposes than matching name(s), birth date(s), and
27 non-unique physical descriptors (sex, ethnicity, hair/eye color, etc.). Plaintiff is informed
28

1 and believes and based thereon alleges that if law enforcement personnel observe that two
2 different warrants identify their respective subjects by the same CII number, law
3 enforcement will consider the two warrants to refer to the *same* person even though the
4 warrants' other identifiers (names, birth dates and non-unique physical descriptors) do
5 not match.

6 18. Plaintiff is informed and based thereon alleges that the facts stated above are
7 well known to those in the law enforcement community. Law enforcement officials also
8 know that CII, FBI and LA Main numbers are proxies for fingerprints. Hence, absent an
9 breakdown or error in the system, two different CII numbers (or FBI numbers or LA Main
10 numbers) means two different people.

12 **B. Livescan.**

13 19. Plaintiff is informed and believe that within a matter of a few minutes during
14 the course of booking someone into jail, law enforcement agencies, including defendants
15 herein, obtain a person's identification information and biometric identifiers. Law
16 enforcement does so using a process called *Livescan*. When an arrestee is booked into a
17 California jail, in lieu of manually "rolling" prints the jailer takes an electronic image of
18 the arrestee's fingerprints. The arrestee's fingers are placed on an imaging machine's
19 glass plate; the image is then transmitted electronically to the CDOJ. Within a few
20 minutes the CDOJ responds in one of two ways. If the arrestee's fingerprints are already
21 on file, the arrestee's CII number and associated identifiers, along with the arrestee's
22 criminal history if requested, are sent to the arresting agency; if no match is made with
23 existing fingerprints, the CDOJ assigns a newly created CII number and so informs the
24 arresting agency.
25

26 **C. Warrant Databases.**

27 20. Plaintiff is informed and believes and based thereon alleges that law
28

1 enforcement uses local, state and national law enforcement databases to check for
2 outstanding warrants on persons the police detain. These law enforcement warrant
3 databases are designed to capture, if known, the warrant subject's CII, FBI and LA Main
4 numbers. The CDOJ instructs California law enforcement agencies to include, if known,
5 the warrant subject's CII, FBI and LA Main numbers. The databases are also designed
6 to record information about persons wrongly arrested on warrants meant for another, and
7 the CDOJ instructs California law enforcement agencies to record such information into
8 the database.
9

10 **D. CWS (County Warrant System).**

11 21. Plaintiff is informed and believes and based thereon alleges that since 1988,
12 defendant LASD maintains a computer-based system called "County Warrant System" or
13 "CWS." Since 1988, CWS is and has been the depository for all warrants issued by Los
14 Angeles County courts, both unlimited and limited jurisdiction (and the Los Angeles
15 Municipal Court before that court became a superior court).
16

17 22. Plaintiff is informed and believes and based thereon alleges that when a Los
18 Angeles court issues a bench warrant, via information systems owned and managed by
19 defendants LA County, LASD and the latter's Data Systems Bureau, the warrant is
20 created as electronic data in CWS. LA County personnel is responsible for managing the
21 entry of the warrant data into CWS, including any updates to the electronically-created
22 warrant.
23

24 23. Plaintiff is informed and believes and based thereon alleges that CWS is
25 designed to capture and make directly available to *Los Angeles County-based law*
26 *enforcement agencies only*, identification data on a warrant's subject, including but not
27 limited to name, date of birth, ethnicity, height, weight, sex, eye and hair colors, and
28 unique identifier numbers such as CII, FBI, LA Main, driver's license, and social

1 security. Plaintiff is informed and believes and based thereon alleges that CWS is also
2 designed to capture information showing that one or more individuals has been
3 exonerated or cleared as being the warrant's intended subject, and that person can be
4 identified by his unique biometric identifiers such as CIL, FBI and LA Main numbers.

5 24. Plaintiff is informed and believes and based thereon alleges that whenever a
6 Los Angeles County-based law enforcement agency desires to determine if a detainee or
7 arrestee is the subject of an outstanding warrant issued by a Los Angeles County court,
8 agency personnel query CWS. Based upon information retrieved from CWS, the agency
9 personnel will then determine if the person is or is not the warrant's subject. In the case
10 of a Los Angeles County-based law enforcement agency that desires to determine if a
11 person in its custody is the subject of a Los Angeles County warrant, the agency generally
12 relies solely on CWS information. (For a law enforcement agency located outside of Los
13 Angeles County, see paragraphs 27-32 *infra* on how that agency accesses and obtain
14 CWS warrant data.)
15

16 25. LA County personnel can easily and within seconds include additional
17 identifying information about a warrant's subject, even if the information is acquired after
18 a warrant's original issuance. LA County and LASD personnel can also easily and
19 quickly update CWS, after a warrant's original issuance, to show that a particular person
20 has been identified as *not* the warrant's subject.
21

22 26. Plaintiff is informed and believes and based thereon alleges that if a "hard
23 copy" or paper record of the CWS warrant is needed, it is supplied via either a "warrant
24 information sheet" (aka "WIS") or a "warrant abstract." The WIS contains CWS
25 information regarding the warrant's subject, descriptors, bail amount, court issuing the
26 warrant, and so on. The warrant abstract is generated upon an agency's booking of an
27 arrestee on the warrant. Once the warrant abstract is generated, CWS classifies the
28

1 warrant as having been executed. That is, thereafter CWS will *not* list the warrant as
2 being outstanding.

3 **E. WPS (Wanted Person System).**

4 27. Plaintiff is informed and believes and based thereon alleges that since 1971,
5 CDOJ has maintained *Wanted Persons System* ("WPS"). WPS is a computer database
6 containing records of arrest warrants issued by California courts. Its function is to alert
7 California law enforcement agencies about possible arrest warrants issued from any
8 California state court.
9

10 28. Plaintiff is informed and believes and based thereon alleges that a California
11 law enforcement agency uses WPS to locate warrants issued by a California court in a
12 county outside the county in which the agency is based. That is, for warrants issued from
13 a court in a county other than San Joaquin, a San Joaquin County based law enforcement
14 agency uses WPS.

15 29. Plaintiff is informed and believes and based thereon alleges that a law
16 enforcement agency queries WPS "by using a subject's name and physical descriptors or
17 by using numeric identifiers." Examples of numeric identifiers are social security number,
18 driver's license number, FBI number and/or CII number.
19

20 30. Plaintiff is informed and believes and based thereon alleges that the CDOJ has
21 instructed and trained California law enforcement agencies that "[a] match made on a
22 WPS record *does not*, by itself, *provide sufficient grounds to arrest a person*"; instead,
23 the agency that is detaining a person based on information obtained via WPS that the
24 person may be the subject of a warrant, must contact the agency responsible for entry of
25 the warrant information into WPS (the "originating agency"), to confirm the existence of
26 the warrant *and its application to an arrestee*. The originating agency, in turn, "must
27 respond to a confirmation request within 10 minutes on a 24-hour basis."
28

1 31. Plaintiff is informed and believes and based thereon alleges that the CDOJ
2 instructs California law enforcement agencies that when an originating agency knows the
3 warrant subject's unique numeric descriptors – driver's license number, social security
4 number, FBI number, and/or CII number – the agency should input these identifiers into
5 WPS. CDOJ so instructs, Plaintiff is informed, because inputting these identifiers will
6 substantially reduce the likelihood that the wrong person will be detained or arrested on
7 the warrant while inputting the data takes but a few seconds of additional keystrokes.

8
9 32. Plaintiff is informed and believes and based thereon alleges that since two or
10 more persons may share the same (or similar) names, birth dates and physical descriptors,
11 CDOJ instructs California law enforcement agencies that when a hit is made in WPS, a
12 positive identification of the arrestee with the warrant's subject "must be accomplished
13 through the exchange of fingerprint facsimiles and other descriptors during the
14 confirmation discussions between the WPS record contributor [*i.e.*, originating agency]
15 and the holding [*i.e.*, arresting] agency."

16 **F. Criminal Histories.**

17
18 33. Plaintiff is informed and believes and based thereon alleges that pursuant to
19 California law, any person who has been charged with a felony crime and who was (a)
20 booked on that felony charge *or* (b) appeared in court response to that charge, will have
21 been fingerprinted. Furthermore, Plaintiff is informed and believes and based thereon
22 alleges that pursuant to California law, the person's fingerprints will have been forwarded
23 to CDOJ so that CDOJ can and will record, under the person's CII number matched to his
24 fingerprints, the fact of the booking on that felony charge. Consequently, the felony
25 booking will be reflected on that person's CDOJ criminal history as verified by his
26 fingerprints.

27
28 34. Plaintiff is informed and believes and based thereon alleges that law

1 enforcement officials also know that if a person is arrested on a felony bench warrant
2 issued by a California court, if the person is in fact the felony warrant's intended subject,
3 at a minimum there should be on the person's CDOJ criminal history the fact of the
4 earlier booking on the felony charge. Consequently, if the CDOJ criminal history reflects
5 *no* felony booking consistent with the later-issued felony bench warrant, law enforcement
6 officials know or should know the absence of the prior felony booking is *prima facie*
7 evidence that the detainee is *not* the warrant's intended subject.
8

9 35. Plaintiff is also informed and believes and based thereon alleges that the
10 warrant subject's CDOJ criminal history ordinarily reflects the underlying
11 prosecution that led to the warrant's issuance; if the history does not reflect such
12 prosecution, it is highly likely that the detainee is *not* the person the warrant seeks.

13 **VI. FACTS RE PLAINTIFF'S ARREST/INCARCERATION.**

14 36. On May 18, 2009, in *People v. Juan Martinez*, LA Superior Court No.
15 BA289647, the court issued a no-bail felony bench warrant for the arrest of one Juan
16 Martinez ("suspect Martinez") who is *not* the Plaintiff. The *Martinez* warrant was issued
17 on account of alleged probation violation(s). Stated on the face of the warrant was the
18 charge of violating Cal. Health & Safety Code § 11351 (possession of controlled
19 substance for sale). The warrant stated its subject's name as "Juan Martinez" with a 1982
20 birth date that matches exactly to Plaintiff's 1982 birth date. The warrant stated its subject
21 was 5'1" tall, weighed 140 lbs, was a male Hispanic with black hair and brown eyes, and
22 was a transient who resided in Los Angeles. The *Martinez* warrant further identified its
23 subject as having fingerprint-matched identifiers CII #A26717596, and LA Main
24 #32635194.
25

26 37. Plaintiff is informed and believes and based thereon alleges that when the
27 *Martinez* warrant was created electronically in CWS, CWS programmatically generated
28

1 a record in WPS reflecting the existing of the *Martinez* warrant. But as stated above, the
2 WPS record of the *Martinez* warrant was *not* the actual warrant; rather, the WPS record
3 enabled agencies outside of Los Angeles County, to ascertain the warrant's existence via
4 a name and birth date query (or query by using another identifier) made in WPS.

5 38. On May 28, 2016, Plaintiff was a passenger in a vehicle stopped by SPD
6 officers, in the City of Stockton. Plaintiff is informed and believes and based thereon
7 alleges the officers ran Plaintiff's name and 1982 birth date in WPS which returned as a
8 possible "hit" the 2009 no-bail felony *Martinez* warrant. Plaintiff is informed and believes
9 and based thereon alleges that the officers knew, based on the WPS information, that the
10 *Martinez* warrant's suspect was 5'1" and weighed 140 lbs, and that his CII number may
11 be A26717596. At the same time the officers knew that Plaintiff was 5'9," weighed well
12 over 200 lbs, and was complaining the warrant was not and could not be his.
13 Notwithstanding these facts, the SPD officers proceeded to arrest and book Plaintiff on
14 the warrant. The officers did so, Plaintiff is informed, based on the information revealed
15 by the WPS inquiry but without verification "through the exchange of fingerprint
16 facsimiles and other descriptors" as instructed by the CDOJ.

17 39. Plaintiff is informed and believes and based thereon alleges that the officers
18 transported Plaintiff to the San Joaquin County jail. As with the SPD officers, on May 28,
19 2016 jail officials ignored the facts on the face of the *Martinez* warrant and the non-
20 matching height and weight. Moreover, Plaintiff is informed that the jail officials
21 received, on May 28, received official confirmation via the jail's livescanning of Plaintiff,
22 that *his* fingerprint-matched CII number was A34913187, whereas jail officials had also
23 received at about the same time, official confirmation that the warrant subject's CII
24 number was A26717596. Jail officials therefore knew that Plaintiff's *fingerprints* did not
25 match those of the warrant's subject.
26
27
28

1 40. Plaintiff is further informed and believes and based thereon allege that there
2 was a confirmation process between officials of San Joaquin and LA County regarding
3 the *Martinez* warrant but notwithstanding the CDOJ's express instructions to both
4 agencies, officials from both counties did *not* verify the *Martinez* warrant as being
5 Plaintiff's "through the exchange of fingerprint facsimiles and other descriptors" as
6 instructed by the CDOJ.

7
8 41. On June 1, 2016, LASD deputies took custody of Plaintiff on the *Martinez*
9 warrant. As he did with SPD and San Joaquin officials, Plaintiff told the deputies he was
10 *not* the subject of this warrant, that it was for another person; the deputies ignored his
11 complaints. During Plaintiff's processing at LASD's Inmate Reception Center ("IRC"),
12 Plaintiff complained to the jailer who was livescanning him that he was not the person
13 the warrant sought, that it was a mistake. Plaintiff made similar complaints to the jail
14 official (male Hispanic) who was behind the booking window at IRC, asking Plaintiff
15 questions about his health. All these officials ignored his complaints. Their response was
16 along the lines of there was nothing they could do about or they were uninterested in
17 doing anything about it.

18
19 42. At the time Plaintiff was protesting to LASD jail officials that he was *not* the
20 subject of the *Martinez* warrant, LASD received official confirmation, via the
21 livescanning of Plaintiff at IRC, that neither his CII number nor his LA Main number
22 matched to the CII or LA Main numbers stated on the *Martinez* warrant. Thus, as with the
23 San Joaquin jail, the LA County jail received official confirmation that Plaintiff's
24 fingerprints did *not* match those of the warrant's subject. Moreover, had LASD officials
25 taken five seconds or so required to generate Plaintiff's LA County or CDOJ criminal
26 histories, officials would have had further confirmation that Plaintiff was *not* the
27 warrant's subject since (a) Plaintiff had no criminal history reflecting the *Martinez*
28

1 warrant's underlying criminal charge and (b) there was no record of Plaintiff of ever
2 having been in Los Angeles County. And had LASD officials taken five seconds or so
3 to generate the warrant subject's criminal history (via his CII #A26717596) LASD
4 officials would have had yet additional confirmation that Plaintiff was *not* the warrant's
5 subject, because the underlying criminal case giving rise to the warrant is associated with
6 a different person named Juan Martinez.

7
8 43. On June 2, 2016, LASD transported Plaintiff to Department 129 of the Los
9 Angeles Superior Court for an appearance on the *Martinez* warrant. When the criminal
10 case was called, the court had a Spanish interpreter for Plaintiff even though, as Plaintiff
11 informed the court officials, he did not speak Spanish. The court ordered Plaintiff's
12 release because the court found that Plaintiff was not the subject of the *Martinez* warrant.

13 44. LASD personnel should have known, just as the SPD and SJSD personnel
14 should have known, that Plaintiff's criminal history, as matched to his fingerprints,
15 excluded him as the subject of the *Martinez* warrant. However, Plaintiff is informed and
16 believes and based thereon alleges that it is a long-standing practice of SPD, SJSD and
17 LASD to *ignore* CII numbers for purposes of verifying whether or not an arrestee is the
18 person described as the warrant's subject. That is, even if the warrant identifies its subject
19 by the subject's CII number, and even though SPD, SJSD and LASD are informed that
20 the arrestee's CII number is different as verified by the arrestee's fingerprints, personnel
21 routinely with these agencies disregard the significance of the non-matching CII numbers
22 because, per the agencies' respective practices, CII numbers play no role in the booking
23 of prisoners into jail.

24
25 45. Plaintiff is informed and believes and based thereon alleges that SPD, SJSD
26 and LASD personnel booked Plaintiff on the *Martinez* warrant despite the evidence, both
27 known and readily available, establishing Plaintiff was *not* the warrant's subject, because
28

1 it is the long-standing practice of these agencies to regularly ignore persons' complaints
2 they are being held on warrants meant for another. Plaintiff is further informed and
3 believes that it is the LASD practice to accept an outside agency's determination that an
4 arrestee is the warrant's subject even though LASD personnel know or should know that
5 the arrestee cannot be the warrant's intended subject.

6 46. Plaintiff is informed and based thereon alleges that while LASD claims it does
7 not routinely ignore a prisoner's complaint that he is being incarcerated based on another
8 person's warrant, in fact LASD personnel routinely ignore that fact which LASD's own
9 records confirm:
10

11 A. Plaintiff is informed and based thereon alleges that numerous individuals
12 have testified they complained to LASD personnel that they were being imprisoned
13 on someone else's warrant but that LASD personnel ignored their complaints.

14 B. Plaintiff is informed and based thereon alleges that in the last five years,
15 LASD records show that as many as 2,000 prisoners were, in fact, wrongly jailed
16 on warrants meant for others. The LASD has claimed that more than 99% of these
17 wrongly imprisoned persons *never* complained to LASD personnel they were being
18 wrongly incarcerated on another person's warrant. Plaintiff submits that because
19 it is reasonable to assume that a person who sincerely believes he is being
20 incarcerated on another person's warrant is likely to make that complaint to his
21 jailer, the LASD claim that more than 99% of the prisoners wrongly incarcerated
22 never so complained is patently false.
23

24 ///

25 ///

26 ///

27 ///

28

FIRST CAUSE OF ACTION

(42 U.S.C. § 1983 – False Arrest/Fourth Amendment)

(Plaintiff as against all defendants)

47. Plaintiff restates and incorporates by reference the foregoing paragraphs as if each paragraph was fully set forth herein.

48. Plaintiff's arrest and imprisonment on the *Martinez* warrant violated his Fourth Amendment rights in that as alleged above, in that the face of the *Martinez* warrant showed that the warrant subject's fingerprints did *not* match to Plaintiff's fingerprints. Therefore, defendants did not have probable cause to believe that Plaintiff was the *Martinez* warrant's intended subject and, in fact, had conclusive evidence that Plaintiff was *not* the warrant's intended subject. Therefore, Plaintiff is entitled to recover damage, both special and general, for the wrongful arrest and imprisonment.

49. Defendants LA County, LASD, Stockton, SPD, San Joaquin and SJSD are liable because the wrongful acts were pursuant to policies, practices and/or customs described above, approved and/or ratified by the agencies' respective policymakers.

SECOND CAUSE OF ACTION

(42 U.S.C. § 1983 – Wrongful Incarceration/Fourteenth Amendment)

(Plaintiff as against all defendants)

50. Plaintiff restates and incorporates by reference the foregoing paragraphs as if each paragraph was fully set forth herein.

51. Plaintiff's arrest and imprisonment on the *Martinez* warrant violated his Fourteenth Amendment rights in that as alleged above, official and reliable law enforcement information, including reliable fingerprint-matched identifiers and other information to which had or which they had easy access with virtually no appreciable effort or cost, excluded Plaintiff as the subject of the *Martinez* warrant. Therefore,

1 Plaintiff is entitled to recover damage, both special and general, for the wrongful
2 imprisonment.

3 52. Defendants LA County, LASD, Stockton, SPD, San Joaquin and SJSD are
4 liable because the wrongful acts were pursuant to policies, practices and/or customs
5 described above, approved and/or ratified by the agencies' respective policymakers.

6 **THIRD CAUSE OF ACTION**

7 **(Cal. Const., Art. I § 13 – Wrongful Incarceration)**

8 **(Plaintiff as against defendant LA County Only)**

9
10 53. Plaintiff restates and incorporates by reference the foregoing paragraphs as if
11 each paragraph was fully set forth herein.

12 54. Plaintiff's imprisonment on the *Martinez* warrant violated his rights protected
13 under Art. I § 13 of the California Constitution, in that as alleged above, official and
14 reliable law enforcement information, including reliable fingerprint-matched identifiers
15 and other information to which had or which they had easy access with virtually no
16 appreciable effort or cost, excluded Plaintiff as the subject of the warrant on which he was
17 incarcerated. Therefore, Plaintiff is entitled to recover damages for the wrongful
18 imprisonment.

19
20 55. Defendant LA County is liable for the wrongful acts under Cal. Gov't Code §
21 815.2(a).

22 **FOURTH CAUSE OF ACTION**

23 **(False Imprisonment)**

24 **(Plaintiff as against defendant LA County only)**

25 56. Plaintiff restates and incorporates by reference the foregoing paragraphs as if
26 each paragraph was fully set forth herein.

27 57. The wrongful imprisonment of Plaintiff on the *Martinez* warrant constituted
28

1 false imprisonment, thereby entitling Plaintiff to recover compensatory damages for his
2 wrongful imprisonment. *Sullivan v. County of Los Angeles*, 12 Cal.3d 710 (1974).

3 **PRAYER**

4 WHEREFORE, Plaintiff prays judgment as follows:

5 **On the First through Fourth Causes of Action:**

6 58. That Plaintiff members be awarded compensatory damages according to proof
7 for his wrongful arrest and incarceration;

8 59. That as against any individually-named defendants, be awarded punitive
9 damages according to proof;

10 60. Attorneys' fees under 42 U.S.C. § 1988, Cal. Civ. Proc. Code § 1021.5, and
11 California's private attorney general doctrine;

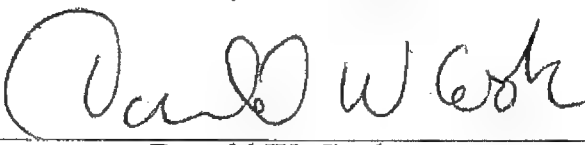
12 **On All Causes of Action:**

13 61. Costs of suit; and

14 62. Such other relief as the Court deems proper.

15 DATED: November 21, 2017

16 **DONALD W. COOK**
17 Attorney for Plaintiff

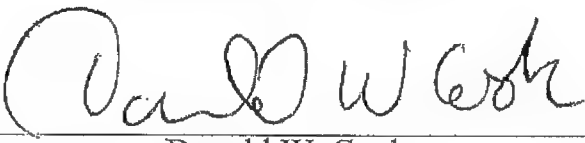
18
19 By 
20 _____
21 Donald W. Cook

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

DATED: November 21, 2017

DONALD W. COOK
Attorney for Plaintiff

By 
Donald W. Cook

DONALD W. COOK, CSB 116666
ATTORNEY AT LAW
3435 Wilshire Blvd., Suite 2910
Los Angeles, CA 90010
(213) 252-9444; (213) 252-0091 facsimile
E-mail: manncook@earthlink.net

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JUAN FRANCISCO MARTINEZ, an
individual,

Plaintiff,

vs.

COUNTY OF LOS ANGELES; LOS
ANGELES COUNTY SHERIFF'S
DEPARTMENT; CITY OF STOCKTON;
STOCKTON POLICE DEPARTMENT;
COUNTY OF SAN JOAQUIN; SAN
JOAQUIN COUNTY SHERIFF'S
DEPARTMENT; and DOES 1-10, both
their individual & official capacities,

Defendants.

Case No. 2:17-cv-08501 FMO
(JEMx)

**NOTICE OF ERRATUM RE
COMPLAINT FOR
DAMAGES (DOC. 1)**

TO THE COURT AND ALL PARTIES OF RECORD:

PLEASE TAKE NOTICE that attached hereto are **Exhibits A** and **B** which were
inadvertently omitted from the Complaint for Damages (doc. 1) filed November 21, 2017
(see ¶12 of doc. 1).

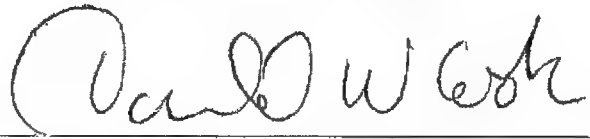
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///

///

1 DATED: November 27, 2017

2 **DONALD W. COOK**
3 Attorney for Plaintiff

4 
5 By _____
6 Donald W. Cook

**ROBERT MANN
DONALD W. COOK**
Attorneys at Law

3435 Wilshire Blvd., Ste. 2900, Los Angeles, CA 90010
(213) 252-9444

Robert Mann
Donald W. Cook

Samantha R. Koerner

CLAIM FOR DAMAGES
(Government Code Section 910)

January 30, 2013

To:

Executive Officer
County of Los Angeles Board of Supervisors
500 West Temple Street, Room 383
Kenneth Hahn Hall of Administration
Los Angeles, CA 90012

Clerk of the Board of Supervisors
County of Riverside
Attn: Claims Division
4080 Lemon Street, 1st Floor
Riverside, CA 92501

City Clerk
City of Banning
99 E. Ramsey St.
Banning, CA 92220

Name of Claimant(s): Mario Alberto Garcia,
others similarly situated.

Banning, CA 92220, and all

Address to Which Notices Should be Sent: Robert Mann and Donald W. Cook, 3435 Wilshire Blvd., Suite 2910, Los Angeles, CA 90010 (213) 252-9444.

How Damages or Injuries Occurred: Claimant(s) do not have all of the facts concerning how or why the damages and/or injuries occurred because claimant(s) were and are not aware of all the facts, are unable to engage in discovery, and cannot read the minds of others. However, Claimant states the following: On November 26, 2012, Claimant was stopped by Banning Police Department officers and arrested for DUI. Claimant was booked at the Banning Police station and held on an outstanding warrant that did not pertain to him. Although Claimant complained to Banning Police officers that he was not the subject of the warrant, officers ignored his complaints. Claimant was then transferred to the Riverside County jail where he also complained to deputies that he was not the subject of the warrant. Deputies ignored his complaints. Claimant was later transferred to the Los Angeles County jail on or about November 27, 2013, where Claimant again complained to deputies that he was not the subject of the warrant. His complaints were once again ignored.

On November 29, 2012, Claimant appeared in the Los Angeles Superior Court and was released after the Court determined that he was not the subject of the outstanding warrant.

When Damages or Injuries Occurred: Beginning early morning hours on or about November 26, 2012 and continuing through November 29, 2012.

Where Damages or Injuries Occurred: Beginning in City of Banning, California, at or near the intersection of East Hoffer Street and North Alessandro Road; continuing to the Banning PD jail; Riverside County jail; and Los Angeles County jail.

Act or Omission Causing Injuries: Failure to use and/or access readily available and/or known

Executive Officer
Clerk of the Board of Supervisors
City Clerk
January 30, 2013
Page 2

official and reliable law enforcement information establishing that Claimant was *not* the subject of the warrant. City of Banning, County of Riverside and County of Los Angeles has failed to properly select, train, supervise, and discipline employees. This claim includes but is not limited to violations of state and federal law, state and federal constitutional and civil rights violations, including but not limited to federal causes of action including but not limited to 42 U.S.C. §§ 1983 and 1985, 42 U.S.C. § 1962, and state causes of action including but not limited to Civil Code §§ 51.7 and 52.1, invidious discrimination, non-invidious discrimination, intentional torts, non-intentional torts, negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, battery, assault, conversion, false arrest, false imprisonment, trespass on the case, trespass vi et armis, vicarious liability, non-vicarious liability, conspiracy, and whatever other legal theories may apply.

Names of Persons Causing Injuries: Unknown employees of the Banning Police Department, Riverside County Sheriff's Department and the Los Angeles County Sheriff's Department and other unknown persons.

Damages or Injuries: General and special damages, including spending two days in jail and losing two days of work.

Amount of Money Claimed at This Time: Within the jurisdiction of the Superior Court, but in excess of the jurisdiction of the Superior Court, Limited Jurisdiction.

Names, Addresses of Witnesses, Doctors, Hospitals: Mario Alberto Garcia.

Deficiency in Claim: If this claim fails to comply in any respect with any requirement of Cal. Gov't Code § 910 or § 910.2, you are required to provide written notice of the insufficiency pursuant to Cal. Gov't Code § 910.8.



Donald W. Cook
On Behalf of Claimant(s)

PROOF OF SERVICE BY MAIL

I am a resident of the county of Los Angeles; I am over the age of 18 and not a party to the within action; my business address is 3435 Wilshire Blvd., Suite 2900, Los Angeles, CA 90010.

On January 30, 2013, I served the within **CLAIM FOR DAMAGES (Government Code Section 910)** on the interested parties herein by placing the original and two true copies thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California addressed as follows:

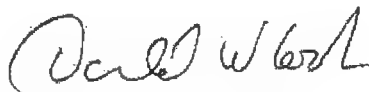
County of Los Angeles
Executive Officer
County of Los Angeles Board of Supervisors
500 West Temple Street, Room 383
Kenneth Hahn Hall of Administration
Los Angeles, CA 90012

County of Riverside
Clerk of the Board of Supervisors
Attn: Claims Division
4080 Lemon Street, 1st Floor
Riverside, CA 92501

City of Banning
City Clerk
99 E. Ramsey St.
Banning, CA 92220

I declare under penalty of perjury that the above is true and correct.

Executed on January 30, 2013, at Los Angeles, California.



Donald W. Cook



COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL

648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713



JOHN F. KRATTLI
County Counsel

March 4, 2013

TELEPHONE
(213) 974-1913
FACSIMILE
(213) 687-8822
TDD
(213) 633-0901

Donald W. Cook, Esq.
ROBERT MANN
DONALD W. COOK
3435 Wilshire Boulevard, Suite 2900
Los Angeles, California 90010

Re: Claim(s) Filed: January 30, 2013
File Number(s): 13-1103968*001
Your Client(s): Mario Alberto Garcia

Dear Counselor:

This letter is to inform you that the above-referenced claim which you filed with the Los Angeles County Board of Supervisors was rejected on February 28, 2013.

An investigation of this matter fails to indicate any involvement on the part of the County of Los Angeles, its officers, agents or employees. Accordingly, your claim was rejected on that basis and no further action will be taken on this matter.

In the event you believe there is County involvement, this letter is also to inform you that an investigation of this matter fails to indicate any liability on the part of the County of Los Angeles its officers agents or employees. Accordingly, your claim was rejected on that basis, as well, and no further action will be taken on this matter.

STATE LAW REQUIRES THAT YOU BE GIVEN THE FOLLOWING "WARNING":

Subject to certain exceptions, you have only (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6.

HOA.697402.1


Donald W. Cook, Esq.
Page 2

This time limitation applies only to causes of action for which Government Code Sections 900 - 915.4 require you to present a claim. Other causes of action, including those arising under federal law, may have different time limitations.

Very truly yours,

ANDREA SHERIDAN ORDIN
County Counsel

By


JESSIE LEE
Senior Associate County Counsel
General Litigation Division

JL:ce

DECLARATION FOR SERVICE BY MAIL

STATE OF CALIFORNIA
County of Los Angeles

I am and at all times herein mentioned have been a citizen of the United States and resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 648 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California 90012.

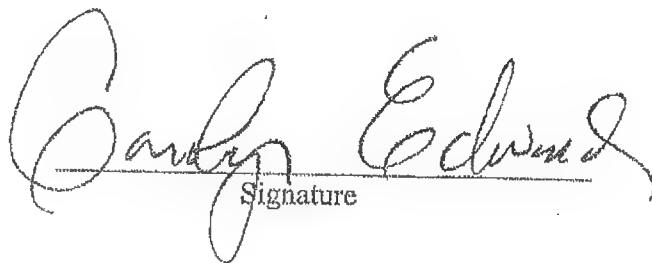
That on the 25 day of March 2013, I served the attached "Notice of Denial Letter" upon claimant by depositing a copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in a United States mail box in Los Angeles, California addressed as followed:

Donald W. Cook, Esq.
ROBERT MANN
DONALD W. COOK
3435 Wilshire Boulevard, Suite 2900
Los Angeles, California 90010

and that the person on whom said service was made has/resides his/her office at a place where there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 25 day of March 2013, at Los Angeles, California.


Signature

Michael F. Babitzke, Esq. – SBN 50048
Michael F. Babitzke, Inc.
6 S. El Dorado Street, Suite 305
Stockton, CA 95202
Telephone: (209) 465-5722
Facsimile: (209) 465-0714
E-mail: mbabitzke@sbcglobal.net

Attorney for Plaintiffs

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
STOCKTON BRANCH

DANNY BRISTOW, MICHELLE
BRISTOW, BILLY BRISTOW, CONNIE
BRISTOW, STEVE BRISTOW, DAWN
BECKER BRISTOW, CHRISTINA
SHARP, JOEY LAYTON and SHERRY
LOGSTON LAYTON,

Plaintiffs,

vs.

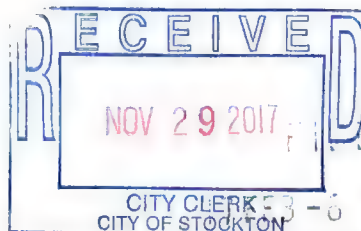
RICHARD ESTER, KAREN SANGSTER,
STATE OF CALIFORNIA, COUNTY OF
SAN JOAQUIN, CITY OF STOCKTON,
CITY OF GALT and DOES 1 THROUGH
250,

Defendants.

GENERAL ALLEGATIONS

Plaintiffs by and through their attorney, Michael F. Babitzke, state the following:

1. Each Plaintiff is a citizen of the United States, a competent adult, and a resident of the County of San Joaquin at the time of the events giving rise to this suit which were on February 13, 2015;



ROSSA JUNGUEIRO, CLERK

BY LIRA VEGA
DEPUTY

THIS CASE HAS BEEN ASSIGNED TO JUDGE
BARBARA A. KROGER
FOR ALL PURPOSES, INCLUDING TRIAL

CASE NO.:

STK-CV-UMC-2017-1194

COMPLAINT FOR DAMAGES:

1. 42 USC 1983-Civil Rights
Violations against individuals;
2. 42 USC 1983 Unlawful Customs,
Policies, Habits or Procedure;
3. California Civil Code 5.52.1(b)
California Civil Rights Status

1 2. Each act and failure to act as hereinafter alleged occurred in the County of
2 San Joaquin, State of California;

3 3. At all times mentioned herein, DOE Defendants named 1 through 200 are
4 fictitiously named Defendants by reason of the fact that the Plaintiff is ignorant of their
5 true identity. Plaintiff prays leave to amend this complaint upon ascertaining the true
6 identity, capacity and basis of liability of such fictitiously named defendants. Does 1
7 through 100 are individuals who are employed by one or more of the municipal entities
8 and were acting or purporting to act in the scope and/or claiming to act within the course
9 and scope of their duties at time of the events in question. Does 100 through 150 are
10 fictitiously named Defendants of whom Plaintiffs are also ignorant of their identity or are
11 also ignorant of their capacity, basis of liability and status, as well as their employers.
12 Plaintiff prays leave to amend this complaint with appropriate charging allegations upon
13 ascertaining the true identity, capacity and basis of liability of such fictitiously named
14 Defendants. Plaintiffs allege Does 1 to 150 are liable for participation for actions taking
15 place in the offices of their respective employers and/or the State of California. Does
16 150 to 200 are fictitious Defendants who at all relevant times are responsible for the
17 hiring, training, supervision, and discipline of the other Defendants, including DOE
18 Defendants 150 to 200. Plaintiffs are informed Does 120 to 200 acted negligently
19 relative to said hiring, training, and supervision. Does 200 to 225 were supervisors of
20 the various municipalities as will be shown according to proof who failed to properly
21 supervise the other personnel at the location and scene as will be shown according to
22 proof. Does 225 to 250 are agents of the State of California who are in some fashion
23 legally responsible for the acts and/or failures to act as herein alleged. All Defendants
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1 acted as will be shown according to proof with negligence, recklessness, malice, and
2 oppression;

3 4. Each Defendant, including fictitious Defendants, in doing the acts and/or
4 omissions as hereinafter described acted within the course and scope of his or her
5 employment with their respective employers;

6 5. As appropriate and subject to discovery, each Defendant is sued within his
7 or her official capacity as will be shown according to proof;

8 6. Plaintiffs allege that each of these Defendants sued herein acted
9 wrongfully and/or is otherwise responsible for the events and happenings hereinafter
10 described, causing injuries and damages to each Plaintiff as will be shown according to
11 proof;

12 7. The State of California is a sovereign entity and is sued herein in the
13 capacity of being a Defendant;

14 8. The County of San Joaquin is a municipal corporation organized pursuant
15 to the laws of the State of California;

16 9. The City of Stockton is a municipal corporation organized pursuant to the
17 laws of the State of California;

18 10. The City of Galt is and at all times relevant hereto to has been a municipal
19 corporation organized pursuant to the laws of the State of California;

20 11. Plaintiffs are informed and believe, and thereon, allege that each of the
21 Defendants were at all material times an agent, servant, employee, partner, joint
22 venturer, co-conspirator, and/or alter ego of the remaining Defendants and in doing the
23 things thereon allege were acting in the course and scope of that relationship. Plaintiffs
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1 are further informed and believe, and thereon, allege that each of the Defendants herein
2 gave consent, aid, and assistance to each of the remaining Defendants and ratified
3 and/or preauthorized acts or omissions of each Defendant as alleged herein, except as
4 may be hereinafter otherwise specifically alleged. At all material times, each Defendant
5 was jointly engaged in constitutionally violation activity resulting in a deprivation of
6 Plaintiffs constitutional rights, property interests, liberty, and other actionable harm;
7

8 12. The acts and omissions of the employees of the municipal Defendants in
9 the State of California as set forth herein, were at all material times, pursuant to the
10 actual customs, policies, practices, and/or procedures of the municipalities and/or State
11 of California as will be shown according to proof and, alternatively, such acts and/or
12 omissions were pursuant to the lack hereof, and, in lieu of policies, practices, and
13 procedures that should have been in place;
14
15

16 13. At all material times each Defendant acted under color of the laws,
17 statutes, ordinances, and regulations of the State of California and/or the municipal
18 corporations as hereinafter alleged;
19

20 14. The County of San Joaquin, City of Stockton, and City of Galt hereinafter
21 are referred to as San Joaquin, Stockton and Galt respectfully;
22

23 15. The County of San Joaquin, Stockton and Galt are subject to the laws of
24 the United States of America, specifically the Constitution of the United States of
25 America and 42 US Code Section 1983;
26

27 16. On or about February 13, 2015, each Plaintiff was in some fashion
28 connected with each other Plaintiff and were also connected in some fashion with real
property located at 4719 East Harvest Road, and 4715 East Harvest Road and or 4695

1 East Harvest Road and had an ownership interest or right to possession or other
2 interest as will be shown according to proof;

3
4 17. On or about February 5, 2015, Detective Richard Ester, who Plaintiffs are
5 informed and believe was employed by the County of San Joaquin Sheriff's Office or as
6 otherwise will be shown according to proof, prepared an affidavit for the issuance of a
7 search warrant. Plaintiffs had been unable to secure this affidavit prior to the time of the
8 filing of this lawsuit. Based upon the affidavit, however, an individual who purported to
9 be a judge executed a warrant. The signature of the judge is completely illegible if,
10 indeed, the purported signature is in fact that of a judge. The warrant was issued
11 demanding that the Sheriff's Department search premises located at 4719 East Harvest
12 Road also known as 4715 East Harvest Road in Acampo, California. The February 5th
13 warrant is solely that of a search warrant and authorized only that property may be
14 seized that "was used as the means of committing a felony" or that tends to show that a
15 particular person has committed a felony and does make reference to the fact that there
16 is apparently a warrant for "the persons arrest";

17
18 18. Plaintiffs are informed and believe and based upon such information and belief
19 allege that the person to be arrested referred to in the February 5th warrant was Brian
20 Keith Bristow who had not been an occupant of the premises for approximately ten
21 years and was not on the premises at any time in February of 2015;

22
23 19. Eight days later, Karen Sangster caused a search warrant and affidavit to be
24 issued adding the address of 4695 East Harvest Road;

25
26 20. Plaintiffs are informed and believe and based on such information and belief
27 allege that the February 13th warrant does not contain any information about Brian
28

1 Keith Bristow being on, or remaining on, or having visited, or being in any way
2 connected with any parcel of the real property in question as of February of 2015;

3 21. On or about February 13, 2015, Richard Ester and Karen Sangster along with
4 Does 1 through 100 participated in the service of a search warrant allegedly looking for
5 illegal items of personal property and/or evidence of a crime and/or Brian Keith Bristow
6 at said address;
7

8 22. Each of the Plaintiffs, as will be shown according to proof:
9

10 (a) Were innocent of any illegal activity whatsoever;

11 (b) Had no knowledge of any illegal activity; as no criminal activity was
12 occurring or had occurred on the premises;

13 (c) Did not have in their possession or under their custody or control
14 any item of physical property that was illegal;

15 (d) Did not have any information of any illegal activity;

16 (e) Were not named in the search warrants;

17 (f) Did nothing whatsoever to create a suspicion of wrong doing on the
18 part of any reasonable person at any time on February 13, 2015;

19 (g) Fully cooperated with all lawful directions by any of the law
20 enforcement officers;

21 23. Notwithstanding the fact that each of the Plaintiffs were not named in the warrant,
22 did nothing illegal, and did nothing from which a reasonable person could infer any
23 illegality, Does 1 through 100, as will be shown according to proof, violated the
24 constitutional rights of each Plaintiff under the color of law as will be shown according to
25 proof as follows:
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27
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1 (a) Illegal detention by reason of lack of probable cause and not being
2 named in any warrant;

3 (b) Illegal arrest by reason of arrest with lack of probable cause;

4 (c) Illegal imprisonment by reason of lack of probable cause;

5 (d) Wrongful destruction of personal property;

6 (e) Wrongful damage to real property; and

7 (f) Intentional infliction of emotional distress;

8
9
10 Each Plaintiff was damaged as will be shown according to proof and for which
11 each Plaintiff seeks damages as will be shown according to proof;

12 24. Such wrongful actions referred to above consisted of the utilization of excessive
13 physical force, the utilization of officially issued hand cuffs, and other objects intended to
14 threaten and permit the Defendants and each of them to physically subdue anyone with
15 whom they encountered. As a direct and proximate result, the wrongful actions occurred
16 and Defendants did subdue Plaintiffs. The wrongful application of unreasonable force
17 occurred under circumstances where Defendants and each of them, as will be shown
18 according to proof, were donning paramilitary style SWAT gear including helmets and
19 masks, were armed with firearms, weapons, paramilitary equipment belts and other fear
20 invoking equipment, as will be shown according to proof; Doe Defendants were
21 unduly aggressive and threatening in their manner and presentation to each Plaintiff;

22
23
24 25. The wrongful activity of the Doe Defendants 1 through 200 terrorized each
25 Plaintiff as will be shown according to proof;

1 26. Further, the Defendants caused an incredible and obscene amount of physical
2 damage to the real and personal property that was "searched" apparently frustrated
3 because they were unable to find any illegal items of personal property whatsoever;
4

5 27. At all material times and, alternatively, the acts and omissions of each individual
6 Defendant, including fictitious Defendants, were intentionally, and/or wanton and/or
7 willful and/or reckless and/or callous and/or malicious and/or deliberately indifferent to
8 the rights of each Plaintiff;
9

10 28. As a direct and proximate of each Defendants acts and/or omissions as set forth
11 above, each Plaintiff sustained the following injuries and damages past and future,
12 including, but not limited to;

13 (a) Economic damages including, but not limited to, out of pocket
14 expenses, loss of personal property, property damage, and as to Connie Bristow and
15 Steve Bristow physical damage to real damage owned by them;
16

17 (b) Severe emotional distress, fear, anxiety, sleeplessness, humiliation,
18 indignity, and loss of liberty;

19 (c) All other cognizable special and general damages;

20 (d) Violations of Federal Constitutional rights for all damages and
21 penalties recoverable under 42 US Code Section 1983 and 1988 and as otherwise
22 allowed under Federal and State law;
23

24 WHEREFORE Plaintiff prays for relief as set forth below;

25 //

26 //

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FIRST CAUSE OF ACTION

(42 U.S. C 1983 As Against all Individual Defendants Does 1 through 200)

29. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the general allegations set forth above;

30. By the actions and omissions described above, Defendants 1 through 50 and 150 through 200 violated 42 U.S.C. 1983, depriving Plaintiff of the following well settled constitutional right that are protected the 4th and 14th Amendment to the US Constitution: (1) having the right to be free from unreasonable searches and/or seizures as secured by the 4th and 14th Amendments; and (2) the right to be free from unlawful and unreasonable detentions and/or arrests;

31. The failure to intervene, prevent or stop the 4th Amendment violations on the part of the individually named Defendants by supervisors who were in a position and had sufficient time to do so when such violations occurred renders Doe Defendants 150 through 175 liable for these violations;

32. The forcible entry into real property in question and the search that took place thereafter was beyond the scope of the search authorized by the alleged search warrant, in particular, the unlawful seizure of each person, the destruction of personal property and the destruction of real property for no lawful, or proper, or appropriate, or conceivable law enforcement purposes, other than the malicious destruction of other people's property which apparently gave Defendants glee and pleasure were clear violations of 42 U.S. Code 1983 as will be shown according to proof at trial;

1 33. DOES 150 through 175 failed to prevent the unconstitutional acts of the
2 Defendants, failed to properly supervise the Defendants engaging in wrongful acts, thus
3 rendering these Defendants liable directly in the supervisory capacity;
4

5 34. As direct and proximate result thereof of the individually named Defendants, and
6 DOE Defendants are guilty of wonton and reckless disregard for the right, safety, and
7 emotional well being of Plaintiffs, and by reason thereof, Plaintiffs are entitled to
8 exemplary punitive damages to be proven at trial against the individual Defendants
9 according to proof. By operation of law no punitive damages are sought directly against
10 the municipal corporations, but only because existing law prohibits the imposition of
11 punitive damages against a municipal corporation;
12

13 **SECOND CAUSE OF ACTION**

14 **(As Against San Joaquin County, City of Stockton, and City of Galt)**

15
16 35. The Plaintiffs incorporate by reference all the above allegations and as fully as
17 set forth herein;

18 36. Plaintiffs allege that unconstitutional actions and/or omissions of the DOE
19 Defendants, Richard Ester, and Karen Sangster were pursuant to the following
20 customs, policies, practices, and/or procedures of the municipal corporations or in the
21 alternative which were directed, encouraged, allowed, and/or ratified by the policy
22 making officials of the respective municipal corporations as will be shown according to
23 proof;
24

25 (a) failure to supervise or discipline officers for misconduct that
26 resulted in violation of citizens civil rights or rules;
27
28

1 (b) failure to institute, maintain, or effectively administer an appropriate
2 training regimen for performing swat raids and/or, failure to use appropriate and
3 generally accepted law enforcement procedures for performing swat raids, and/or failing
4 to supervise officers and/or detectives when the officers employ the awesome power of
5 a swat force to conduct a raid, failure to ensure the conduct of such officers and/or
6 detectives did not run afoul of the U.S. Constitution;
7

8 (c) and/or failing to institute, maintain, or effectively administer an
9 appropriate training regime on subjects such as seizures of citizens and/or the use of
10 force, and/or abuse of the use of the awesome power of detention and/or arrest granted
11 to peace officers, and/or use and toleration of inadequate, deficient, and/or improper
12 procedures for handling, investigating and reviewing complaints of unlawful searches
13 and/or unlawful seizures and other official misconduct as will be shown according to
14 proof;
15
16

17 37. In the alternative, the municipal Defendants may have instituted some policies or
18 training addressing some of the topics listed, but have through deliberate indifference to
19 citizens rights, failed to properly oversee, enforce, and/or properly carry out such
20 policies and/or training;
21

22 38. The above described customs, policies, practices, and/or procedures of each of
23 the municipal corporations were a moving force and/or proximate cause of the
24 deprivations of the Plaintiffs' constitutional rights and violation of 42 U.S.C. 1983 as more
25 fully set forth above;
26

27 39. As a proximate result of the foregoing customs, policies, practices, and/or
28 procedures each Plaintiff sustained injuries and damages that are set forth above, and

1 each Plaintiff is therefore entitled to general compensatory damages in an amount to be
2 proven at trial;

3 WHEREFORE Plaintiffs pray for relief as set forth below;
4

5
6 **THIRD CAUSE OF ACTION**

7 **(42 U.S. C 1983 As Against the State of California)**

8 40. The Plaintiffs incorporates by reference the General Allegations and the First and
9 Second Causes of Action as fully as set forth herein;
10

11 41. With respect to the allegations set forth above, DOES 175-200 were full
12 participants, and in particular, were fully involved with the illegal and unlawful actions
13 which took place on February 13, 2015 in the County of San Joaquin as hereinafter will
14 be shown by proof;
15

16 42. In being involved in such actions the State of California and DOES 175 through
17 200 deprived each Plaintiff of rights set forth above;

18 WHEREFORE Plaintiffs pray for relief as set forth below:

19 (a) Compensatory damages in an amount according to proof which is
20 fair, just, and reasonable to exemplary;
21

22 (b) Punitive damages against individual Defendants under 42 U.S.
23 Code 1983 in an amount according to proof which is fair just and
24 reasonable;
25

26 (c) For attorneys fees and costs of suit under 42 U.S. Code 1983-1988;

27 (d) For all other damages, penalties, costs, interests, and attorneys fees as
28 otherwise may be allowed;

1 (e) For such other and further relief as this Court deems proper and just.

2 DATED: February 6, 2017

3 Respectfully submitted,

4 

5
6 Michael F. Babitzke
7 Attorney for Plaintiffs
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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Janice M. Jackson, 26 Martinique Ct. Stockton, Ca 95210 TELEPHONE NO: (209) 453-2961 FAX NO. (Optional): E-MAIL ADDRESS (Optional): cinnamon959@gmail.com ATTORNEY FOR (Name):	FOR COURT USE ONLY <div style="text-align: center; font-size: 1.2em; font-weight: bold;">FILED</div> <div style="text-align: center;">2017 DEC 15 PM 4:18</div> <div style="text-align: center;">ROSSA JUNQUEIRO, CLERK</div> <div style="text-align: center;">Judy L. Halsey</div> <div style="text-align: center; font-weight: bold;">DEPUTY</div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: SAN JOAQUIN SUPERIOE COURT MAILING ADDRESS: 222 E. Weber Avenue CITY AND ZIP CODE: Stockton, CA 95219 BRANCH NAME:	<div style="transform: rotate(-15deg); font-weight: bold; font-size: 1.1em;"> THIS CASE HAS BEEN ASSIGNED TO JUDGE ROGER ROSS IN DEPARTMENT 11B FOR ALL PURPOSES, INCLUDING TRIAL. </div>
PLAINTIFF: Janice M. Jackson DEFENDANT: Delta College Police Dept. & Stockton Police Dept.	
<input type="checkbox"/> DOES 1 TO _____	
COMPLAINT—Personal Injury, Property Damage, Wrongful Death <input type="checkbox"/> AMENDED (Number): Type (check all that apply): <input type="checkbox"/> MOTOR VEHICLE <input checked="" type="checkbox"/> OTHER (specify): <input type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death <input type="checkbox"/> Personal Injury <input checked="" type="checkbox"/> Other Damages (specify):	
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited	CASE NUMBER: <div style="text-align: center; font-weight: bold; font-size: 1.2em;"> UNP 13530 </div> <div style="text-align: center;">STK-CV -2017-</div>

1. Plaintiff (name or names): Janice M. Jackson

alleges causes of action against defendant (name or names):

San Joaquin Delta College Campus Police Dept. & Stockton Police Dept.

2. This pleading, including attachments and exhibits, consists of the following number of pages:

3. Each plaintiff named above is a competent adult

a. ☐ except plaintiff (name):

(1) ☐ a corporation qualified to do business in California

(2) ☐ an unincorporated entity (describe):

(3) ☐ a public entity (describe):

(4) ☐ a minor ☐ an adult

(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed

(b) ☐ other (specify):

(5) ☐ other (specify):

b. ☐ except plaintiff (name):

(1) ☐ a corporation qualified to do business in California

(2) ☐ an unincorporated entity (describe):

(3) ☐ a public entity (describe):

(4) ☐ a minor ☐ an adult

(a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed

(b) ☐ other (specify):

(5) ☐ other (specify):

☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

Stock Police: Tully, Hernandez
 Delta College Police: Wood

SHORT TITLE:

We Slight Infection Enormous Disks

STK-CV-^{UNPT}-2017-13530

4. ☒ Plaintiff (name):

is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

- a. ☐ except defendant (name):

- (1) ☐ a business organization, form unknown
(2) ☐ a corporation
(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

- c. ☐ except defendant (name):

- (1) ☐ a business organization, form unknown
(2) ☐ a corporation
(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

- b. ☐ except defendant (name):

- (1) ☐ a business organization, form unknown
(2) ☐ a corporation
(3) ☐ an unincorporated entity (describe):

(4) ☒ a public entity (describe):

(5) ☐ other (specify):

- d. ☐ except defendant (name):

- (1) ☐ a business organization, form unknown
(2) ☐ a corporation
(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

☐ Information about additional defendants who are not natural persons is contained in Attachment 5.

6. The true names of defendants sued as Does are unknown to plaintiff.

a. ☐ Doe defendants (specify Doe numbers): _____ were the agents or employees of other named defendants and acted within the scope of that agency or employment.

b. ☐ Doe defendants (specify Doe numbers): _____ are persons whose capacities are unknown to plaintiff.

7. ☒ Defendants who are joined under Code of Civil Procedure section 382 are (names):

STAN D. Truly Barnard
Delta College in Wood
Rd 100

8. This court is the proper court because

- a. ☐ at least one defendant now resides in its jurisdictional area.
b. ☒ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.
c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.
d. ☐ other (specify):

9. ☒ Plaintiff is required to comply with a claims statute, and

- a. ☒ has complied with applicable claims statutes, or
b. ☐ is excused from complying because (specify):

SHORT TITLE:

Negligent Emotional Distress

CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- a. ☐ Motor Vehicle
 b. ☐ General Negligence
 c. ☐ Intentional Tort
 d. ☐ Products Liability
 e. ☐ Premises Liability
 f. ☒ Other (specify):

negligent business emotional

11. Plaintiff has suffered

- a. ☐ wage loss
 b. ☐ loss of use of property
 c. ☐ hospital and medical expenses
 d. ☐ general damage
 e. ☐ property damage
 f. ☐ loss of earning capacity
 g. ☒ other damage (specify):

negligent emotional distress

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12.
 b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
 (2) ☒ punitive damages

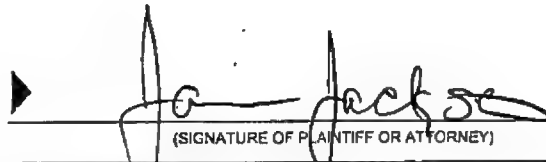
The amount of damages is (in cases for personal injury or wrongful death, you must check (1)):

- (1) ☐ according to proof
 (2) ☒ in the amount of: \$

15. ☐ The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):

Date:

12/5/17 Janice Jackson
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PLAINTIFF OR ATTORNEY)

1 Janice Jackson[Attorney Names]
2 26 Martinique Court
3 Stockton, CA 95210
4 (209) 453-2961
5 Cinnamon959@gmail.com
6
7

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9
10 FOR THE COUNTY OF SAN JOAQUIN

11 JANICE M. JACKSON,

12 Plaintiff,

13 San Joaquin Delta College Campus Police

14 Department

15 Stockton Police Department

16 Defendant
17

Case No.: [Number]

COMPLAINT FOR DAMAGES

[PLEADING TITLE]

Intentional Infliction of
EMOTIONAL DISTRESS &
Negligence ADA TITLE IX

18 Plaintiff is informed and believes and thereon alleges that each of the fictitiously
19 named defendants is responsible in some manner for the occurrences herein alleged, and that the
20 Plaintiff's damages as herein alleged were proximately caused by there conduct.

21 Dated this 15 of December, 2015.

22
23 
24 [Attorney Name]
25
26
27
28

From: "JANICE JACKSON" <jjackson327@students.deltacollege.edu>

Subject: Identify Campus Police Officer 12/15/16

Date: Thu, 12 Oct 2017 12:12:23 -0700

To: emaloney@deltacollege.edu

From: Elizabeth Maloney <emaloney@deltacollege.edu>

Subject: Re: Identify Campus Police Officer 12/15/16

Date: Thu, 12 Oct 2017 14:40:28 -0700 (PDT)

To: JANICE JACKSON <jjackson327@students.deltacollege.edu>

HI Janice

The day you were here I filled out the APS form and turned it in to the officer (physically handed it to him) when he came to speak with you. I told you that I needed to file the report which I did and turned it over to the campus police - that was my obligation. I am not privileged to the follow up nor do I know where the report goes from there.

I think it was officer Wood who spoke with you.

Dr. Maloney

----- Original Message -----

From: "JANICE JACKSON" <jjackson327@students.deltacollege.edu>

To: "Elizabeth Maloney" <emaloney@deltacollege.edu>

Sent: Thursday, October 12, 2017 12:12:23 PM

Subject: Identify Campus Police Officer 12/15/16

Dear Dr. Maloney,

Please email me the name of the campus police officer that came to your office on 12/15/16 when I reported to you that I was a victim of a sexual assault while asleep on 11/27/16 in my home at 26 Martinique Ct. in Stockton, Ca. MY front-left porcelain crown was pushed-backed from alignment. I made you and the P/O aware of it by opening my mouth and showing it to you. I explained to you and the P/O this proves I was unconscious. I also showed both of you the injection-site on the left side of my back. You said you were mandated to report it to the DOJ. There is no report of the incident with Campus Police or Stockton Police Dept.

Thank You,

Janice Jackson

ID#98-501-4300

STOCKTON POLICE DEPARTMENT



22 E MARKET ST.
STOCKTON, CA 95202

(209) 937-8495

16-48278

Supplement No
ORIG

Reported Date
12/20/2016
Rpt/Incident Typ
950
Member#/Dept ID#
TUY, KENNETH T

Administrative Information

Agency	STOCKTON POLICE DEPARTMENT		DR	16-48278	Supplement No	ORIG	Reported Date	12/20/2016	Reported Time	17:42	CAD Call No	163610541	
Status	SIGNIFICANT INCIDENT REPORT		Rpt/Incident Typ	OBTAIN A REPORT									
Location	26 MARTINIQUE CT					City	Stockton		ZIP Code	95210		Rep Dist	0321
District	Sector	From Date	From Time	Member#/Dept ID#									
BC	BE	12/20/2016	17:42	2652/TUY, KENNETH T									
Assignment	BEAR CREEK THIRD WATCH PHASE TWO					2nd Member#/ID#	BERNARDINO, JESUS S						
Assignment	BEAR CREEK THIRD WATCH PHASE TWO					Entered by	2652						
Assignment	BEAR CREEK THIRD WATCH PHASE TWO					BEAR CREEK THIRD WATCH PHASE TWO							
RMS Transfer	Prop Trans Stat	Approving Officer		Approval Date		Approval Time							
Successful	Successful	1357		01/07/2017		13:59:55							
Route - Other	Yes												

Person Summary

Invl	Invl No	Type	Name	MNI	Race	Sex	DOB
SUB	1	I	JACKSON, JANICE	1000289	B	F	05/31/1961

Summary Narrative

STOCKTON POLICE DEPARTMENT**SUBJECT INVOLVED 1: JACKSON, JANICE**

Involvement SUBJECT INVOLVED		Invl No 1	Type Individual	Name JACKSON, JANICE				MNI 1000289	
Race BLACK	Sex FEMALE	DOB 05/31/1961	Age 55	Juvenile? No	Height 5'08"	Weight 165#	Hair Color BLACK	Eye Color BROWN	PRN 3184784
Type HOME	Address 26 MARTINIQUE CT					City Stockton		State CALIFORNIA	
ZIP Code 95210		Date 12/26/2016							
Type Operator License		ID No N8206083				OLS CALIFORNIA			
Phone Type Cell	Phone No (209) 707-9249			Date 12/26/2016					

Modus OperandiPremise Type
RESIDENCE MULTIPLE**Narrative****NOTIFICATION:**

On 12/20/16, at 1801 hrs, Ofc Bernardino and I, Ofc Tuy (3E75), were dispatched to 26 Martinique Ct for report of rape. We were in full Stockton PD uniform and driving a marked patrol vehicle. We arrived on scene at 1821 hrs.

INVESTIGATION:

Prior to our arrival, (Sub) Janice Jackson advised CTC that someone had entered through her back window on 12/02/16 and rape her while she was asleep.

On arrival, I contacted Jackson at her home. There were a large number of dogs inside her home barking as we were knocking on her front door. Jackson advised she was putting her dogs away prior to letting us into her home.

Jackson requested we follow her into her home and she began rambling about gaps in her doors and windows. We followed her to her garage and her bedroom. The garage door leading into the house had several padlocks and a piece of 2x4 preventing it from opening.

As we walked into her bedroom, I saw she had boarded up her windows with plywood. She also had a piece of plywood on top of her bedroom doorway. The bedroom door also had multiple padlocks and a 2x4 used to prevent the door from opening. The sliding glass door was the only glass that I observed that was not boarded up.

While I was on scene, the dogs would not stop barking at me. The barks were very loud and would make it difficult to sleep through.

I spoke with Jackson who provided the following statement in summary:

STATEMENT OF (Sub) Janice Jackson:

Jackson stated there were gaps in her windows and doors all over the house that she is in the process of securing.

She was walking around her home and pointing at the top and bottom of her doorway and the seals of her sliding glass door. I asked her why PD was called and she picked up a dog food bag instead of speaking to me. She emptied the content onto her floor and showed it to me. It appeared to be bones and a skull of a cat or a small dog. Jackson was handling the bones with her bare hands.

Jackson stated someone had been killing animals and buried it in her backyard. She doesn't know who it is, but it's possible it's the same people that has been entering her home and raping her while she is asleep.

Jackson ran into her room and returned with a medication bottle. She opened the bottle and shook the content out of it. A mucus type of substance fell out of the bottle.

Jackson stated the substance came out of her body, but her body does not produce that type of substance. She stated she will show me an injection site on her body.

Jackson began pulling up the back of her shirt and showed me a large dry patched of skin.

STOCKTON POLICE DEPARTMENT**Narrative**

Jackson advise that was where the suspect had injected her with some type of medication to render her unconscious. She stated she would have woken up during the rape if she wasn't medicated.

Jackson stated she had called Stockton PD numerous times regarding someone raping her, but Stockton PD doesn't follow through with the investigation. Jackson is upset that Stockton PD is not collecting "DNA" to prosecute the person raping her.

(End of Statement)

INVESTIGATION (continued) :**ATTACHMENTS :**

None

EVIDENCE :

None

DISPOSITION :

Matter of information.

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Matthew C. Bradford SBN (196798) ROBINSON BRADFORD LLP 3439 Brookside Road, Suite 212 Stockton, CA 95219 TELEPHONE NO: (209) 954-9001 FAX NO. (Optional): (209) 954-9091 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff, Latu Hafoka</p>	<p>FOR COURT USE ONLY SUPERIOR COURT 2018 JAN -8 PM 2: 08 ROSA JUNGUEIRO, CLERK ENEDINA LISITSIN DEPUTY</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Joaquin STREET ADDRESS: 180 E. Weber Ave. MAILING ADDRESS: 180 E. Weber Ave. CITY AND ZIP CODE: Stockton, CA 95202 BRANCH NAME: Stockton Branch</p>	<p>THIS CASE HAS BEEN ASSIGNED TO JUDGE W. STEPHEN SCOTT IN DEPARTMENT 10A FOR ALL PURPOSES, INCLUDING TRIAL</p>
<p>PLAINTIFF: Latu Hafoka DEFENDANT: City of Stockton and Stockton Police Department</p>	
<p><input checked="" type="checkbox"/> DOES 1 TO 25</p> <p>COMPLAINT—Personal Injury, Property Damage, Wrongful Death <input type="checkbox"/> AMENDED (Number): Type (check all that apply): <input type="checkbox"/> MOTOR VEHICLE <input checked="" type="checkbox"/> OTHER (specify): Negligence <input type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death <input checked="" type="checkbox"/> Personal Injury <input checked="" type="checkbox"/> Other Damages (specify): Pain, Suffering</p> <p>Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited</p>	
<p>CASE NUMBER: STK-CV- 1101 -2018- 214</p>	

1. Plaintiff (name or names): Latu Hafoka
 alleges causes of action against defendant (name or names):
 City of Stockton and Stockton Police Department
2. This pleading, including attachments and exhibits, consists of the following number of pages: 7
3. Each plaintiff named above is a competent adult
 - a. ☐ except plaintiff (name):
 - (1) ☐ a corporation qualified to do business in California
 - (2) ☐ an unincorporated entity (describe):
 - (3) ☐ a public entity (describe):
 - (4) ☐ a minor ☐ an adult
 - (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) ☐ other (specify):
 - (5) ☐ other (specify):
 - b. ☐ except plaintiff (name):
 - (1) ☐ a corporation qualified to do business in California
 - (2) ☐ an unincorporated entity (describe):
 - (3) ☐ a public entity (describe):
 - (4) ☐ a minor ☐ an adult
 - (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) ☐ other (specify):
 - (5) ☐ other (specify):

☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

SHORT TITLE:

Hafoka v. City of Stockton, et al

CASE NUMBER:

4. ☐ Plaintiff (name):

is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

- a. ☒ except defendant (name): City of Stockton
- (1) ☐ a business organization, form unknown
- (2) ☐ a corporation
- (3) ☐ an unincorporated entity (describe):
- (4) ☒ a public entity (describe):
a City.
- (5) ☐ other (specify):

c. ☐ except defendant (name):

- (1) ☐ a business organization, form unknown
- (2) ☐ a corporation
- (3) ☐ an unincorporated entity (describe):
- (4) ☐ a public entity (describe):
- (5) ☐ other (specify):

b. ☒ except defendant (name): Stockton Police Dept.

- (1) ☐ a business organization, form unknown
- (2) ☐ a corporation
- (3) ☐ an unincorporated entity (describe):
- (4) ☒ a public entity (describe):
City Police Department
- (5) ☐ other (specify):

d. ☐ except defendant (name):

- (1) ☐ a business organization, form unknown
- (2) ☐ a corporation
- (3) ☐ an unincorporated entity (describe):
- (4) ☐ a public entity (describe):
- (5) ☐ other (specify):

☐ Information about additional defendants who are not natural persons is contained in Attachment 5.

6. The true names of defendants sued as Does are unknown to plaintiff.

- a. ☒ Doe defendants (specify Doe numbers): 1-25 were the agents or employees of other named defendants and acted within the scope of that agency or employment.
- b. ☒ Doe defendants (specify Doe numbers): 1-25 are persons whose capacities are unknown to plaintiff.

7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

- a. ☐ at least one defendant now resides in its jurisdictional area.
- b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.
- c. ☒ Injury to person or damage to personal property occurred in its jurisdictional area.
- d. ☐ other (specify):

9. ☒ Plaintiff is required to comply with a claims statute, and

- a. ☒ has complied with applicable claims statutes, or
- b. ☐ is excused from complying because (specify):

SHORT TITLE:

Hafoka v. City of Stockton, et al

CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- a. ☐ Motor Vehicle
 b. ☒ General Negligence
 c. ☐ Intentional Tort
 d. ☐ Products Liability
 e. ☐ Premises Liability
 f. ☒ Other (specify):

Negligence Per Se

11. Plaintiff has suffered

- a. ☒ wage loss
 b. ☐ loss of use of property
 c. ☒ hospital and medical expenses
 d. ☒ general damage
 e. ☐ property damage
 f. ☒ loss of earning capacity
 g. ☒ other damage (specify):

Pain, suffering, and emotional distress.

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12.
 b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

The incident occurred at 9630 Laramie Court, Stockton, CA 95209.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
 (2) ☒ punitive damages

The amount of damages is (in cases for personal injury or wrongful death, you must check (1)):

- (1) ☒ according to proof
 (2) ☐ in the amount of \$

15. ☒ The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):

All paragraphs herein.

Date: January 3, 2018

Matthew C. Bradford

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

SHORT TITLE:

Hafoka v. City of Stockton, et al.

CASE NUMBER:

1

(number)

CAUSE OF ACTION—General Negligence

Page 4ATTACHMENT TO ☒ Complaint ☐ Cross - Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name): Latu Hafoka

alleges that defendant (name): City of Stockton and Stockton Police Department

☒ Does 1 to 25

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff

on (date): January 23, 2017

at (place): 9630 Laramie Court, Stockton, CA 95209

(description of reasons for liability):

On or about January 23, 2017 Plaintiff Latu Hafoka was at her home at 9630 Laramie Court, Stockton, CA 95209 watching her 3 month old granddaughter. At approximately 10:00 a.m. Ms. Hafoka heard a noise outside her home, so Ms. Hafoka opened her front door to investigate the source of the noise. Unbeknownst to Ms. Hafoka the Stockton Police Department had chased a suspect into her neighborhood, had closed off her cul de sac, and had released a police dog to search for the suspect.

As soon as Ms. Hafoka put one foot outside her front door, she saw an unattended and unleashed police dog approximately 25ft. away from her. The police dog immediately began to charge at Ms. Hafoka, but before Ms. Hafoka could get the door closed she tripped and fell over. The police dog then got in the door and bit Ms. Hafoka twice on her knee and calf. When the police dog bit Ms. Hafoka the police dog latched onto her and began jerking its head side to side, while Ms. Hafoka laid on the ground screaming and yelling in pain and fear. Ms. Hafoka tried to get the police dog off of her, but she was not able to. Eventually police officers from the Stockton Police Department approached Ms. Hafoka and attempted to get the police dog to release its grip on Ms. Hafoka, but the dog did not listen to police officers verbal commands. The officers even hit the dog in the face, but the dog refused to release its grip on Ms. Hafoka. The dog was latched onto Ms. Hafoka for about five (5) minutes before the officers were able to get the dog to release.

The injuries and damages suffered by Plaintiff were caused by and were the direct and proximate result of the Defendants' and DOES 1-25 joint, several, and combined negligence, carelessness, and recklessness, as more fully set forth herein. Specifically, in failing to properly restrain, chain, and/or leash the aforementioned police dog; in failing to enforce proper police procedures or to ensure that proper police procedures were followed that a K-9 officer who was charged with possession and control of a police dog kept said dog under control

SHORT TITLE: Hafoka v. City of Stockton, et al.

CASE NUMBER:

1 FIRST CAUSE OF ACTION - NEGLIGENCE (Cont'd)

2 and restraint at all times; In failing to be vigilant and/or to supervise the actions of said dog in a safe and
3 proper manner; In failing to protect Plaintiff, from said police dog when Defendant knew or should have
4 known in the exercise of reasonable care that said police dog had a history and/or propensity of
5 deliberately pursuing humans; In failing to protect Plaintiff, from said dog when Defendant had actual
6 knowledge that said dog was trained as a police dog to engage in pursuits of human beings; In failing to
7 effectively command said dog in order to stop the dog from pursuing Plaintiff; In failing to train and/or
8 reinforce any training such that Defendant was capable of maintaining control over said dog at all times
9 and in all situations; In failing to properly train said dog to ensure it would obey all verbal commands.
10 Defendants negligence thereby caused Plaintiff significant harm, losses, and damages. Defendants
11 negligence was a substantial factor in causing said harm to Plaintiff.

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(Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, not line numbers):

27

This page may be used with any Judicial Council form or any other paper filed with the court.

Page 5

SHORT TITLE: Hafoka v. City of Stockton, et al.

CASE NUMBER:

1 SECOND CAUSE OF ACTION - NEGLIGENCE PER SE (Against All Defendants)

2 1. Plaintiff hereby re-alleges and incorporates herein by reference each and every allegation contained in
3 the previous paragraphs as though fully set forth herein.

4 2. Plaintiff is informed and believes, and thereon alleges, that Defendants are the owner of the police dog
5 involved in the aforementioned attack on Plaintiff and said police dog bit Plaintiff.

6 3. Plaintiff is informed and believes, and thereon alleges, when Plaintiff was bit she was lawfully on
7 private property, her own home. The police dog bite was a substantial factor in causing Plaintiff's injuries.

8 4. Plaintiff is informed and believe, and thereon alleges, that Defendants were per se negligent for their
9 dog biting Plaintiff, in violation of, including but not limited to, California Civil Code Section 3342.
10 Plaintiff is further informed and believes, and thereon alleges, that at all times herein Plaintiff was a
11 person belonging to the class of persons sought to be protected by said civil code section and that the
12 violation of said civil code was a direct, legal and proximate cause of the injuries and damages complained
13 of herein.

14 5. As a direct, legal and proximate result of the conduct of Defendants and DOES 1-25, inclusive,
15 Plaintiff was compelled to, and did, employ the services of physicians, nurses, and the like, to care
16 for and treat her, and will be required to employ the services of physicians, nurses, and the
17 like, in the future, the exact amount of such losses to be stated according to proof, pursuant to California
18 Code of Civil Procedure Section 425.10.

19 6. As a further direct, legal and proximate result of the conduct of Defendants as set forth above, Plaintiff
20 suffered lost earnings and earning capacity, the exact amount of such losses to be
21 stated according to proof, pursuant to California Code of Civil Procedure Section 425.10.

22 7. As a further direct, legal and proximate result of the conduct of Defendants as set forth above, Plaintiff
23 was injured in her health, strength, and activity, sustaining injuries to her body, and shock and injury to
24 her back, all of which have caused, and continue to cause her great physical, mental, and nervous pain
25 and suffering. Plaintiff is further informed and believes, and thereon alleges, that said injuries may result

26 *(Required for verified pleading)* The items on this page stated on information and belief are *(specify item numbers, not line
numbers)*:

27 This page may be used with any Judicial Council form or any other paper filed with the court.

Page 6

SHORT TITLE: Hafoka v. City of Stockton, et al.

CASE NUMBER:

1 SECOND CAUSE OF ACTION - NEGLIGENCE PER SE (Cont'd)

2
3 in permanent disability to her, all to her general damage in amount which will be stated according to
4 proof, pursuant to California Code of Civil Procedure Section 425.10.
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26 (Required for verified pleading) The items on this page stated on information and belief are (specify item numbers, not line
27 numbers):

This page may be used with any Judicial Council form or any other paper filed with the court.

Page 7

Reggie R. Kittell Jr
~~6833 Ashland St.~~ 3469 Benjamin Holt #485 1-10-2018
~~Oakland, Ca 94605~~ Stockton Ca. 95206

510) 677-3367
Attorney for Plaintiff

Filed JAN 12 2018
ROSA JUNQUEIRO, CLERK
By TRUDY L. HALEY
DEPUTY

Superior Court of California
County of San Joaquin
Stockton Branch

Reggie R. Kittell Jr.

THIS CASE HAS BEEN ASSIGNED TO
JUDGE W. STEPHEN SCOTT IN
DEPARTMENT 10A FOR ALL PURPOSES.
INCLUDING TRIAL
Case: CR-2017-
4161207

✓
The People of the state of California,
Carl Morris, Officer Matthew Watson,
Officer Powell, Officer Madson (AKA)
Officer Silber, Sgt. Nhem, Officer Robinson

Complaint
Civil Case

7
STK-CV-UMC-2018-469

I Reggie R. Kittell Jr., the undersigned say, on
information and belief, that in the County of
San Joaquin, state of California did happen:

I am seeking damages for the illegal arbitrary
arrest and Detention, and malicious Prosecution of
myself (Reggie R. Kittell Jr.) and my kids (Reggie Kittell III,
Azuri Zion Kittell) on the date of 12-23-2017 and ongoing.
The arrest and detention, and the malicious Prosecution
was based on preference, bias, prejudice, or convenience
rather than on reason or fact. The malicious use
of the Process was meant to show malice towards me
and my kids. The above stated Defendants had
knowledge that the statements Carl Morris, Corretta Morris

1 and Quanita Savory on the incident Report
2 17-48366 were false and recklessly disregarded
3 the truth. One says I hit her and Grabbed
4 her throat, one says I didn't hit her nor grabb
5 her throat, but restrained her. On Page
6 5 of 8, of the incident report 17-48366 under
7 sub heading Investigation, the Officer states, "I
8 checked the left side of Does (Quanita Savoy) head and
9 her throat for injuries. I did not see any visible
10 signs of injury to Doe. I offered Doe medical
11 assistant and she declined. After speaking
12 with Doe, I spoke with Carl Morris and he
13 provided the following statement." (end quote.)

On the Date of 12-23-17 I was
leaving my home on Benjamin Holt Dr. with
my sons (Reggie K. Azuri K.) in my arms, one
on left side and one on Right side. When a
Officer approach us guns drawn aiming
at me and my sons. There was a blinding light
aimed at us as well. My son Azuri Kittell
began screaming and crying as soon as he
had seen the weapon pointed at him. My sons
are 4 years old and 5 years old. I tried to
calm him down but he was terrified. The
Officer said are you Reggie Kittell I replied
yes. He instructed me to Place my son on
the ground. The ground was soaking wet and
Azuri K. has sickle cell SS I was hesitant (2)
to Place him on the wet ground, but the Officer
insisted, and I complied because I didn't want my kids
in trouble. My son screamed more as I placed him

on the ground, and grabbed my son. Refusing
to let go. I ask the officer to get my
son off of the ground. He ask can he
put them on the couch inside I said yes.
They continued crying as the cop grab me
and handcuffed me. He also had a knife
with him. I said what is the problem
officer why are doing this to us. He
said I had robbed someone and beat them
up. I said it wasn't me I been here
with my kids. He said his partner was
gathering more information and he would
tell me if I was under arrest. I said
it looks like I am already under arrest
being that my kids and I was held at
gunpoint and I am now handcuffed in front
of them. Soon more officers came into
my home. Then two officer who were
discussing something I could hear what was
said. Before you know it I was being hurried
off towards a waiting Police Car. As I
was walking toward the officer car one of
my neighbors pulled up, I screamed at him, "please
call my sister to pick up my kids the Police
are arresting me. And I yelled her phone number
to them. They were dialing immediately relaying
my message. The police placed me in the back
of the squad car, and within minutes my sister

② ③

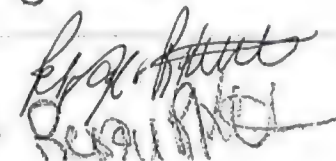
Pulled up in her car. I told the officer that
I had joint legal custody of my kids and
I request that my kids go with my sister.
She would take them to their mom. I
gave the officer their mom phone number
and said she would give you permission
to allow the kids to go with my sister
until she got here to pick them up.
The officer coldly turned to me and
said they are going to CPS. I told
the officer I didn't want them
going to a institution. Alone it would
only damage them further. He stopped
listening and ordered a unit on his
phone to pick them up and take them
to CPS. I was frantic I didn't want
my kids institutionalize in any way. The
officer told me the alleged victim did
not wish to press charges against me
and refused to sign a statement, but
he was arresting me anyway.

I am seeking damages for
the mental abuse that this traumatic
experience has placed on my kids and
myself. I am seeking damages for the
mental damage and child endangerment on
my son Azuri Kaleb who's sister is (4)

And who I was forced to place
on the wet ground. I am seeking
damages for the mental abuse my
kids receive when the officers abused
us with weapons drawn and knife growling
It is totally unheard of to point automatic
weapons at a 4 year or 5 year old.

Finally there was an abundant amount
of constitutional amendments violated, during my
unlawful arrest and detention and malicious
prosecution. While I sat in back of squad car the
officer showed up with a white cellphone
that was in my house on the bathroom counter. I
said how did you get that it was inside my home
you are not suppose to be searching my home. I
told him to put phone back where he found it
and he complied. When he returned to the squad
car he no longer had my iPhone, but now he
had the keys to my car in his hands. I said,
why are you going thru my apartment you do not
have permission to search my home. He said I needed
my keys to get back in when I'm released. That was
clearly a violation of the IV Amendment of the
Constitution. Anyway I was arrested and lock up
in Stockton's Jail system, and it was two day until
Christmas. When I arrived at the Jail I asked
what my chances were how much was

my bail. They told me \$225,000 was my bail
and that I was being charged with PC 211 Robbery
and PC 243 Battery. That was preposterous. And
violation of the VIII Amendment of the Constitution.
which states: Excessive bail shall not be required,
nor excessive fines imposed, nor cruel and unusual
punishments inflicted. I knew I couldn't bail
out and that I would be in jail thru Christmas. It
was confirmed that the bail was excessive when
after Christmas my bail was charge to \$25,000
and the charges were changed as well. I immediately
asked for a (OR) to be released on my own Recognizance
because I had to fight the way I was being
treated. I was denied a (OR) by Judge Gordon
the reason being I was convicted and tried
and completed a sentence of resisting arrest
in 2014 so he denied me base on that charge.
Now that was double Jeopardy. The double
Jeopardy Clause bars second prosecutions after
acquittal or conviction, and prohibits multiple
punishments for the same offense. Well I was
being prosecuted and imprisoned based on a conviction
I completed my commitment to. I seek Punitive damages
as well as Special damages for my pain and suffering
my inconvenience and my lost of lifestyle.
execute 1-10-18
Stockton Ca.

Signed 
Reginald

(6)

Bert Carter, Jr., Bar No 81278
Attorney at Law
1322 Webster Street, Suite 208
Oakland, CA 94612
Telephone (510) 465-7727

Attorney for Plaintiffs
DAVID HARVEY and
CAROLYN HARVEY

FILED
MAR 23 PM 1:48
KODA J. HERRING, CLERK
BY DONNA EDWARDS
CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
CIVIL-UNLIMITED JURISDICTION

DAVID HARVEY AND
CAROLYN HARVEY,

Plaintiffs,

v.

THE CITY OF STOCKTON, THE
STOCKTON POLICE DEPARTMENT,
STOCKTON POLICE OFFICER
ADRIANNA ARISTA, sued individually,
and as a STOCKTON POLICE OFFICER,
and DOES 1 through 20.

Defendants.

CASE 1 STR-CV-UPI-2018-3677

COMPLAINT FOR DAMAGES

1. Negligence
2. False Arrest
3. False Imprisonment
4. Intentional Infliction of Emotional Distress
5. Negligent Infliction of Emotional Distress
6. Punitive Damages

Plaintiffs DAVID HARVEY and CAROLYN HARVEY, allege as follows:

THE PARTIES

Plaintiffs

1. Plaintiffs, DAVID HARVEY and CAROLYN HARVEY, reside, and at all material times relevant to this action, were residing in the City of Oakland, County of Alameda, State of California.

Defendants

2. Defendant City of Stockton is, and at all times herein mentioned was, a

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COMPLAINT FOR DAMAGES
David Harvey et al. v. The City of Stockton, et al.
San Joaquin County Superior Court Docket No. XXXXXX

1 municipal corporation duly organized and existing under the laws of the State of California

2 3. Defendant City of Stockton Police Department is, and at all times herein
3 mentioned was, a duly constituted law enforcement agency charged with administering and
4 maintaining law enforcement within the City of Stockton, a City and political division of the
5 State of California, duly organized and existing under the laws of the State of California.
6

7 4. Defendant City of Stockton Police Officer Adrianna Arista, is and all times
8 hereinafter set forth, was employed by the Stockton Police Department. Said defendant officer
9 is sued herein individually and in her capacity as a Stockton Police Officer.
10

11 5. The true names and capacities, whether individual, corporate, associate,
12 representative, or otherwise, of defendants named as Does 1 through 20, inclusive are unknown
13 to plaintiff, who therefore sues them by such fictitious names. Plaintiff will amend this
14 complaint to show the true names and capacities when they have been ascertained.

15 6. Plaintiffs are informed and believe and thereon allege that each of the Doe
16 defendants is legally responsible in some manner for the damages and the events complained of
17 herein, and legally and proximately caused and continue to cause damage to plaintiffs. Each
18 and every defendant had a duty to plaintiffs.
19

20 7. Plaintiffs are informed and believe and thereon allege that at all times herein
21 mentioned each of the defendants, including those sued under fictitious names, was the agent
22 and/or employee of each of the remaining defendants, and in doing the things hereinafter
23 alleged, was acting within the course and scope of this agency and/or employment and with the
24 permission and consent of the other defendants.

25 8. Plaintiffs are required to comply with an administrative claim requirement
26 under California law. Plaintiffs have complied with all applicable requirements and a copy of
27 the claim that was filed with the City of Stockton is attached as Exhibit A.

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San Joaquin County Superior Court Docket No. XXXXXX

GENERAL ALLEGATIONS

9. On April 5, 2017, Plaintiff David Harvey, was stopped by a City of Oakland Police Officer to be issued a citation for a traffic violation. When that officer ran Plaintiff's name in the Oakland Police Department computer it indicated that there was a warrant for Plaintiff's arrest.

10. That warrant for Plaintiff's arrest had been issued due to charges that had been filed against Plaintiff based upon police reports that claimed Claimant had assaulted and robbed a resident of the City of Stockton.

11. Plaintiff was subsequently picked up and taken to the City of Stockton where he was informed that he was charged in Count One of a Complaint with a violation of *California Penal Code* section 459, a felony, with a Special Allegation of *California Penal Code* section 667.5C (21) Occupied Dwelling, and *California Penal Code* section 12022.5(A), Use of a firearm; in Count Two of the Complaint with a violation of *California Penal Code* section 212.5 (A), a felony, with a Special Allegation of *California Penal Code* section 12022.5(a), Use of a firearm; in Count Three of the Complaint with a violation of *California Penal Code* section 273a(a) a felony, with a Special Allegation of *California Penal Code* section 12022.5(a), Use of a firearm; and, in Count Four of the Complaint with a violation of *California Penal Code* section 422(a), a felony, with a Special Allegation of *California Penal Code* section 12022.5(a), Use of a firearm.

12. The allegations contained within counts 1 through 4 of the complaint involved charges of robbery, burglary and child endangerment at the home of a female citizen that occurred in the City of Stockton.

13. The police report prepared by Stockton Police Officer Adrianna Arista, Badge No. 2421, which contains a narrative of the circumstances of the crimes charged, indicates that

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1 the victim was at home with a minor child when her home was broken into by a former
2 acquaintance. (A copy of that police report is attached as "Exhibit B" and made a part hereof.)
3

4 14. In Officer Arista's police report, it indicates that the victim provided a video
5 from SNAPCHAT to Officer Arista, which the victim informed Officer Arista was a video of
6 that former acquaintance named "David." The victim informed Officer Arista that she did not
7 know David's last name but knew his birthday to be December 7, that he was 31 years old, and
8 that he lived in Oakland.

9 15. Further, in her report, Office Arista indicates that, while she was present at the
10 victim's home, the victim's father arrived. Officer Arista's report indicates that the victim's
11 father then informed Office Arista that "David" was calling him on his cell phone.
12

13 16. Officer Arista's report indicates that she then took the cell phone of the victim's
14 father and had a conversation with David. During the conversation, that person admitted that
15 he was David, and that he was responsible for the events at the victim's home, but claimed that
16 those events occurred because the victim owed him money.

17 17. In her police report Officer Arista, reports that, while speaking with the
18 individual on the cell phone that admitted that he was David, she was able to observe the
19 telephone number of the caller. That telephone number is contained within her police report.
20

21 18. In her police report Officer Arista, reports that, armed with this information, she
22 returned to headquarters and contacted Oakland Police Department Records and requested
23 information on a suspect named David, with a birth date of December 7, 1984.

24 19. Officer Arista's report indicates that in response to her request the Oakland
25 Police Department provided her with the name of Plaintiff David Alvin Harvey.
26

27 20. Officer Arista reports that she then ran the name of Plaintiff David Alvin
28 Harvey through the California Department of Motor Vehicles computer and was provided with

1 a driver's license picture of Plaintiff.

2 21. Officer Arista then reports that the driver's license picture of Plaintiff Harvey
3 appeared to her to be the same individual that she had seen depicted in the SNAPCHAT video
4 that she had been shown by the victim.
5

6 22. However, the police report of Officer Arista does not indicate that she took the
7 next proper procedural step of preparing a photographic lineup of six photographs and then
8 showing that photographic lineup to the victim for the victim's confirmation that the person
9 depicted in the driver's license picture was the same person depicted in the SNAPCHAT video,
10 her former acquaintance named "David."
11

12 23. Nor did Officer Arista pursue the other logical avenue of investigation and seek
13 to determine the name of the person that owned the telephone number that was listed in her
14 police report as belonging to the person that she spoke to on the telephone that admitted to
15 being "David."

16 24. Based solely upon Officer Arista's belief that the person depicted in the driver's
17 license picture was the same person that she had viewed in the SNAPCHAT video, Officer
18 Arista caused an arrest warrant to be issued for Plaintiff's arrest.
19

20 25. It was subsequently determined that the telephone number listed in Officer
21 Arista's police report belonged to an individual by the name of David Ammons.

22 26. That information was then related to the San Joaquin County District Attorney's
23 Office.

24 27. This attorney has been informed that the Deputy District Attorney then obtained
25 a photograph of Mr. Ammons, which was subsequently shown to the victim in that case in a
26 proper photographic lineup. This attorney was also informed that the victim in that case
27 indicated that Mr. Ammons was indeed the man that she had previously been involved with, and
28

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COMPLAINT FOR DAMAGES
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1 was the man that had perpetrated the offenses of which she had complained.

2 28. With that turn of events, Plaintiff was released from custody and the charges
3 filed against him were subsequently dismissed.

4 29. Due to the negligent investigative work of Stockton Police Officer Adrianna
5 Arista, Badge No. 2421, Plaintiff was falsely arrested and wrongfully incarcerated from April 5,
6 2017 until May 22, 2017.

7 30. Plaintiff's vehicle was impounded when he was arrested and, as a result, was
8 lost. Due to this arrest Plaintiff also lost his employment.

9 31. Compounding the harm inflicted upon Plaintiff David Harvey is the fact that he
10 is extremely hearing impaired and during his incarceration he was not afforded the rights called
11 for in the American's With Disabilities Act (ADA).

12 32. As a result of her son's wrongful incarceration, Plaintiff Carolyn Harvey, was
13 subjected to extreme emotional distress.

14 33. Plaintiff Carolyn Harvey knew that her son was innocent of the charges lodged
15 against her son because she knew that, with her son's impaired hearing, he could not have
16 engaged in the telephone conversation that was reported in Officer Arista's police report.

17 34. Because she had a fear of driving, Plaintiff Carolyn Harvey was unable to visit
18 her son during his incarceration and would receive heart-wrenching tearful phone calls from
19 him, through an interpreter, begging her to bail him out of custody.

20 35. However, because the posted bail was set at \$750,000, Plaintiff Carolyn
21 Harvey was financially unable to bail her son out of custody.

22 **FIRST CAUSE OF ACTION**

23 **[Negligence, By Plaintiff David Harvey, Against Stockton Police Officer Adrianna Arista]**

24 36. Plaintiffs hereby incorporate by reference paragraphs 1 through 35, inclusive, as

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1 if herein fully written.

2
3 37. Defendant Stockton Police Officer, Adrianna Arista, was acting within the
4 course and scope of their employment for Defendant City of Stockton, and owed to plaintiffs a
5 duty to exercise due care at all times, during her investigation and the performance of her duties
6 and at all times during the aforementioned incident.

7 38. Defendant Arista failed to follow proper police procedures initially in her
8 failure to make an effort to determine the identity of the individual that was the owner of the
9 telephone number that she recorded in her police report.

10 39. Further, Defendant Arista failed to follow proper police procedures in her
11 failure to make up a proper photographic lineup and present it to the victim for confirmation by
12 that victim, that one of the persons depicted in that photographic lineup was the perpetrator of
13 the crimes to which she had been subjected.

14 40. In doing the aforementioned acts and/or omissions, Defendant Arista,
15 negligently breached said duty to use due care directly and proximately resulting in injuries and
16 damages to plaintiff as alleged herein.

17
18 **SECOND CAUSE OF ACTION**

19 **[False Arrest, By Plaintiff David Harvey, Against Stockton Police Department and**
20 **Stockton Police Officer Adrianna Arista]**

21 41. Plaintiffs hereby incorporate by reference paragraphs 1 through 40, inclusive, as
22 if herein fully written.

23 42. Doe Officers of the Stockton Police Department, including the supervising
24 officer of Officer Arista, were negligent in not observing that in Officer Arista's Police Report
25 that she had not followed proper police procedures.

26 43. Due to their failures, along with the negligence of Office Arista, a warrant was
27 issued for Plaintiff's arrest.

28 44. As a proximate cause of those failures, a warrant was issued for Plaintiff's arrest
resulting in his subsequent arrest and incarceration for almost two months.

LAW OFFICE OF
BERT
CARTER, JR.
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COMPLAINT FOR DAMAGES
David Harvey et al. v. The City of Stockton, et al.
San Joaquin County Superior Court Docket No. XXXXXX

1
2 45. In committing the acts complained of herein, Defendants acted under color of
3 state law by falsely arresting and detaining the Plaintiff with no basis in fact or law to do so. In
4 violating Plaintiff's right to be free from false arrest, the Defendants violated Plaintiff's State
5 and Federal Constitutional rights.

6 46. As a direct and proximate result of the violation of Plaintiff's constitutional
7 right to be free from false arrest by the Defendants and DOES 1 to 10, Plaintiff suffered serious
8 personal injuries and special damages as alleged in this Complaint and is entitled to relief.

9
10 **THIRD CAUSE OF ACTION**

11 **[False Imprisonment, By Plaintiff David Harvey, Against Stockton Police Department and**
12 **Stockton Police Officer Adrianna Arista]**

13 47. Plaintiff hereby incorporates by reference paragraphs 1 through 46, inclusive, as
14 if herein fully written.

15 48. Plaintiff avers that the Defendants breached a duty of care owed to Plaintiff, so
16 as not to deprive him of his personal liberty, by intentionally arresting and incarcerating
17 Plaintiff without just cause.

18 49. Plaintiff avers that the Defendants, without probable cause, wrongfully and
19 unlawfully detained and incarcerated Plaintiff against his will.

20 50. At no time during the detainment did Plaintiff resist or attempt to resist the
21 Defendants officers, but was fully cooperating with the orders of the Defendants.

22 51. Plaintiff avers that the Defendants are liable to him for false imprisonment.

23 52. As a direct and proximate result of the false imprisonment by the Defendants,
24 Plaintiff suffered serious personal injuries, and emotional distress and is entitled to damages.

25 **FOURTH CAUSE OF ACTION**

26 **[Intentional Infliction of Emotional Distress, by Plaintiff David Harvey Against Stockton**
27 **Police Officer Adriana Arista, The Stockton Police Department and the City of Stockton]**

28 53. Plaintiff hereby incorporates by reference paragraphs 1 through 52, inclusive, as
if herein fully written.

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COMPLAINT FOR DAMAGES
David Harvey et al. v. The City of Stockton, et al.
San Joaquin County Superior Court Docket No. XXXXXX

1
2 54. As a result of the wrongful, intentional and malicious acts of defendants, and
3 each of them, the illegal seizure and incarceration of Plaintiff caused him to be in fear for his
4 safety, and fear for his life, and as a result Plaintiff suffered extreme and severe humiliation,
5 physical pain and mental anguish and has been injured in his mind and body.

6 55. As a proximate result of the acts of defendants' willful, wanton and malicious
7 conduct, Plaintiff became terrified and suffered extreme depression, mental anguish and
8 emotional distress, to Plaintiff's general damage according to proof.

9
10 **FIFTH CAUSE OF ACTION**

11 **[Negligent Infliction of Emotional Distress, by Plaintiff David Harvey and Plaintiff**
12 **Carolyn Harvey Against Stockton Police Officer Adriana Arista, The Stockton Police**
13 **Department and the City of Stockton]**

14 56. Plaintiffs hereby incorporate by reference paragraphs 1 through 55, inclusive, as
15 if herein fully written.

16 57. As a result of the negligent acts of Defendants, and each of them, the illegal
17 seizure and incarceration of Plaintiff David Harvey, caused both Plaintiff David Harvey, and his
18 mother, Plaintiff Carolyn Harvey, with whom he lived, to be in fear for the safety, and in fear
19 for the life of, Plaintiff David Harvey, and as a result both the Plaintiffs suffered extreme and
20 severe humiliation, physical pain and mental anguish and have been injured in their mind and
21 body.

22 58. As a proximate result of the acts of Defendants' negligent conduct, Plaintiffs
23 became terrified and suffered extreme depression, mental anguish and emotional distress, all to
24 Plaintiffs' general damage according to proof.

25 **SIXTH CAUSE OF ACTION**

26 **[Punitive Damages, by Plaintiff David Harvey Against Stockton Police Officer Adriana**
27 **Arista]**

28 59. Plaintiff hereby incorporates by reference paragraphs 1 through 58 inclusive, as
if herein fully written.

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COMPLAINT FOR DAMAGES
David Harvey et al. v. The City of Stockton, et al.
San Joaquin County Superior Court Docket No. XXXXXX

1
2 60. At all times herein Defendant Arista, as a trained Police Officer, knew that an
3 individual's liberty is that individual's most valued commodity and that it is the duty of a police
4 office to insure that no individual is wrongfully deprived of that commodity.

5 61. Officer Arista was informed by the victim in this case that she could identify the
6 perpetrator of the alleged offenses of this case.

7 62. Officer Arista also knew that she was in possession of the telephone number of
8 the perpetrator of the alleged offenses of this case.

9 63. Officer Arista also knew that failure to obtain an identification of a suspect by
10 the victim of the alleged crime creates a dangerous situation wherein an innocent party could
11 potentially be wrongfully deprived of his or her liberty.

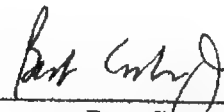
12 64. Notwithstanding this knowledge, Officer Arista, in willful and conscious
13 disregard of Plaintiff's constitutional rights to liberty, failed and refused to avail herself of the
14 two proper avenues for determining the correct perpetrator.

15 65. Officer Arista, with knowledge of the probable detrimental consequences of her
16 actions, willfully and deliberately failed to avoid those consequences and, with conscious
17 disregard for the liberty of Plaintiff and her despicable conduct caused him to be wrongfully
18 arrested and incarcerated. Therefore, Plaintiff is entitled to punitive damages.

19 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

- 20 1. For general damages, according to proof;
21 2. For special damages, according to proof;
22 3. For costs of suit herein incurred; and
23 4. For such other relief as the court deems just and proper

24
25 Dated: March 27, 2018

26
27 

Bert Carter Jr.
Attorney for Plaintiffs

28
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COMPLAINT FOR DAMAGES
David Harvey et al. v. The City of Stockton, et al.
San Joaquin County Superior Court Docket No. XXXXXX

EXHIBIT “A”

Bert Carter, Jr., Bar No. 81278
Attorney at Law
1714 Franklin Street, Suite 101
Oakland, CA 94612
Telephone (510) 465-7727

Attorney for Claimants
DAVID HARVEY and
CAROLYN HARVEY

DAVID HARVEY, CAROLYN
HARVEY,

Claimants,

v.

THE CITY OF STOCKTON, THE
STOCKTON POLICE DEPARTMENT,
STOCKTON POLICE OFFICER
ADRIANNA ARISTA and DOES 1
through 10.

Defendants.

**NOTICE OF CLAIM FOR
DAMAGES**

**TO THE CITY CLERK, FOR THE CITY OF STOCKTON AND THE
STOCKTON POLICE DEPARTMENT:**

You are hereby notified that DAVID HARVEY and CAROLYN HARVEY, whose address is 3504 Custer Street, Apt. A, Oakland, CA 94601, claims damages from the CITY OF STOCKTON, THE STOCKTON POLICE DEPARTMENT AND STOCKTON POLICE OFFICER ADRIANNA ARISTA, for false arrest, false imprisonment and other claims based upon negligence, in the amount computed at the date of presentation of this claim, of Seven Hundred Fifty Thousand Dollars (\$750,000).

The basis for this claim begins on April 5, 2017, when Claimant David Harvey, was

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NOTICE OF CLAIM
David Harvey, et al. v. City of Stockton, et al.
San Joaquin County Superior Court Action Number xxxxxxxx

1 stopped by the Oakland Police for a traffic violation. When the Oakland police officer ran
2 Claimant's name in their computer it informed the Oakland Officers that Claimant had a
3 no-bail warrant for his arrest. This no-bail warrant was based on charges that had been
4 filed against Claimant alleging that Claimant had assaulted and robbed a City of Stockton
5 resident.
6

7 Claimant was picked up and taken to the City of Stockton where he was informed
8 that he was charged in Count One of a Complaint with a violation of *California Penal*
9 *Code* section 459, a felony, with a Special Allegation of *California Penal Code* section
10 667.5C (21) Occupied Dwelling, and *California Penal Code* section 12022.5(A), Use of a
11 firearm; in Count Two of the Complaint with a violation of *California Penal Code* section
12 212.5 (A), a felony, with a Special Allegation of *California Penal Code* section 12022.5(a),
13 Use of a firearm; in Count Three of the Complaint with a violation of *California Penal*
14 *Code* section 273a(a) a felony, with a Special Allegation of *California Penal Code* section
15 12022.5(a), Use of a firearm; and, in Count Four of the Complaint with a violation of
16 *California Penal Code* section 422(a), a felony, with a Special Allegation of *California*
17 *Penal Code* section 12022.5(a), Use of a firearm.
18

19 The allegations contained within counts 1 through 4 involve a robbery, burglary and
20 child endangerment at the home of a female citizen, in the City of Stockton. The police
21 report, which contains a narrative of the circumstances of the crimes charged, indicates that
22 the victim was at home with a minor child when her home was broken into by a former
23 acquaintance. (Stockton Police Department Report Number 16-13636)
24

25 In the police report it indicates that the victim provided a video to Stockton Police
26 Officer Adrianna Arista, Badge No. 2421, from SNAPCHAT which the victim claimed
27 was a video of her former acquaintance named "David." The victim informed Officer
28

NOTICE OF CLAIM

David Harvey, et al. v. City of Stockton, et al.
San Joaquin County Superior Court Action Number xxxxxxxx

1 Arista that she did not know David's last name, but knew his birthday to be December 7,
2 that he was approximately 31 years old, and that he lived in Oakland.
3

4 Most importantly, in her report, Office Arista indicates that, while she was present at
5 the victim's home, the victim's father arrived at the home. Officer Arista's report
6 indicates that the victim's father then informed Office Arista that "David" was on the
7 phone. Officer Arista's report indicates that she then spoke with David, who admitted that
8 he had been at the victim's home. The police report indicates that Officer Arista observed
9 the telephone number from which "David" was calling. That phone number is contained
10 within Officer Arista's report.
11

12 In her police report Officer Arista, reports that armed with this information she
13 returned to headquarters. Officer Arista, reports that she then contacted Oakland Police
14 Department Records section and requested information on a suspect named David, living in
15 Oakland, with a birth date of December 7, 1984. After running the information provided to
16 them by Officer Arista through their computer, the Oakland Police Department provided
17 her with the name of Claimant David Alvin Harvey.

18 Officer Arista then ran Claimant's name through the California Department of Motor
19 Vehicles computer and was provided with a driver's license picture of Claimant. Officer
20 Arista then reports that the driver's license picture of Claimant Harvey appeared to her to
21 be the same person that she had seen depicted in the SNAPCHAT video.
22

23 However, the police report of Officer Arista does not indicate that she took the next
24 logical step of showing the driver's license picture of Claimant to the victim for the
25 victim's confirmation that the person depicted in the driver's license picture was the same
26 person depicted in the SNAPCHAT video, her former acquaintance named "David."

27 Nor did Officer Arista pursue the other logical avenue of investigation, which would
28

1 have been an effort to determine the identity of the person that owned the telephone
2 number that was listed in her police report as belonging to the person that she spoke to on
3 the telephone that admitted to being "David."

4
5 Based solely upon Officer Arista's belief that the person depicted in the driver's
6 license picture was the same person that she had viewed in the SNAPCHAT video, Officer
7 Arista caused an arrest warrant to be issued for Claimant's arrest.

8 At this attorney's request, a private investigator was able to determine that the
9 telephone number listed in Officer Arista's police report belonged to an individual by the
10 name of David Ammons. The information that this attorney was able to obtain was then
11 related to the San Joaquin County District Attorney's Office.

12
13 This attorney is informed that the Deputy District Attorney then obtained a
14 photograph of Mr. Ammons that was subsequently shown to the victim in a photo lineup.
15 Upon being shown the photo lineup, the victim in that case indicated that Mr. Ammons was
16 the man that she had previously been involved with and was the man that had perpetrated
17 the offenses of which she had complained.

18 With that turn of events Claimant was released from custody and the charges filed
19 against him were dismissed. Thus, due to the negligent investigative work of Stockton
20 Police Officer Adrianna Arista, Badge No. 2421, and the Stockton Police Department,
21 Claimant was falsely arrested and wrongfully incarcerated from April 5, 2017 until May
22 22, 2017. His vehicle was impounded and was lost. Due to this arrest he also lost his
23 employment. Compounding the harm inflicted upon Claimant David Harvey is the fact
24 that he is extremely hearing impaired and during his incarceration he was not afforded the
25 rights called for in the American's With Disabilities Act (ADA).

26
27 Claimant Carolyn Harvey, the mother of Claimant David Harvey was subjected to

28
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NOTICE OF CLAIM
David Harvey, et al. v. City of Stockton, et al.
San Joaquin County Superior Court Action Number xxxxxxxx

1 extreme emotional distress as she watched her son go through this ordeal. Claimant
2 Carolyn Harvey knew that her son was innocent of the charges lodged against her son
3 because she knew that he could not have engaged in the telephone conversation that was
4 reported in Officer Arista's police report.
5

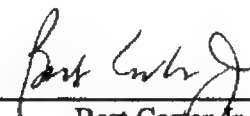
6 Because she had a fear of driving, she was unable to visit her son during his
7 incarceration and would receive heart-wrenching phone calls from him, through an
8 interpreter, begging her to bail him out of custody. However, because the posted bail was
9 set at \$600,000, Claimant Carolyn Harvey was financially unable to do so.
10

11 As a result of the negligence of Stockton Police Officer Adrianna Arista, Badge No.
12 2421, and the employees of the City of Stockton Police Department, Claimants have been
13 subjected to severe injury, with pain and suffering all to their detriment. The Claimants'
14 have also experienced mental anguish and mental suffering, all of which we expect will
15 continue into the future and, therefore, Claimants are seeking special and general damages
16 in a sum that a jury could fairly and reasonably find commensurate for such injuries.

17 All notices and other communications with regard to this claim should be sent to the
18 Law Offices of Bert Carter Jr., at 1714 Franklin Street, Suite 101, Oakland, California,
19 94612, telephone (510) 465-7727.
20

21 If this claim has not been sent to the proper parties, please notify this attorney, or
22 the proper parties, if known.

23 Dated: September 26, 2017
24



Bert Carter Jr.
Attorney for Claimants

25
26
27
28
LAW OFFICE OF
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FAX (510) 465-7487

NOTICE OF CLAIM
David Harvey, et al. v. City of Stockton, et al.
San Joaquin County Superior Court Action Number xxxxxxx

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PROOF OF SERVICE

DAVID HARVEY, et al. v. THE CITY OF STOCKTON, et al.
San Joaquin County Superior Court Case No. xxxxxx

I, the undersigned declare:

I am over the age of 18 years of age, not a party to the above-entitled action, employed in Alameda County and my business address is 1714 Franklin Street, Suite 101, Oakland, CA 94612. On the date set forth below I caused to be served documents as follows:

NOTICE OF CLAIM

on the parties involved addressed as follows:

The City Clerk
The City of Stockton
425 N. Eldorado Street, 1st Floor
Stockton, CA 95202

____ BY FIRST CLASS U.S. MAIL: I caused each such envelope above, with first class postage thereon fully prepaid, to be placed in the United States Mail at Oakland, California. (CCP § 1013(a)(1))

____ VIA FACSIMILE TRANSMISSION (CCP § 1013)

X BY PERSONAL DELIVERY: I caused each such envelope to be delivered by hand to the offices of each addressee above. (CCP § 1010)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on the date set forth below.

Executed on September 29, 2017, at Oakland, California.



Bert Carter Jr.
Declarant

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PROOF OF SERVICE

DAVID HARVEY, et al. v. THE CITY OF STOCKTON, et al.
San Joaquin County Superior Court Case No. xxxxxx

I, the undersigned declare:

I am over the age of 18 years of age, not a party to the above-entitled action, employed in Alameda County and my business address is 1714 Franklin Street, Suite 101, Oakland, CA 94612. On the date set forth below I caused to be served documents as follows:

NOTICE OF CLAIM

on the parties involved addressed as follows:

The Stockton Police Department
The City of Stockton
22 E. Market Street
Stockton, CA 95202

 BY FIRST CLASS U.S. MAIL: I caused each such envelope above, with first class postage thereon fully prepaid, to be placed in the United States Mail at Oakland, California. (CCP § 1013(a)(1))

 VIA FACSIMILE TRANSMISSION (CCP § 1013)

 X BY PERSONAL DELIVERY: I caused each such envelope to be delivered by hand to the offices of each addressee above. (CCP § 1010)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on the date set forth below.

Executed on September 29, 2017, at Oakland, California.


Bert Carter Jr.
Declarant

EXHIBIT “B”

(209) 937-8495

Supplement No
ORIG

Reported Date
04/10/2016
Rpt/Incident Typ
211
Member#Dept ID#
ARISTA, ADRIANNA

OTHER ROUTING: OAKLAND POLICE DEPARTMENT

VIC-1, VIC-2, and VIC-3 were inside the residence when they heard banging coming from the rear door. SUS-1 kicked the rear door in and pointed a gun at VIC-1 while demanding money. VIC-2 told SUS-1 that she was going

Report Officer 2421/ARISTA, ADRIANNA	Printed At 04/11/2016 08:44	Page 1 of 8
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STOCKTON POLICE DEPARTMENT

16-13636

Supplement No
ORIG

Summary

to call the police. SUS-1 then pointed his gun at VIC-2 and VIC-3 and told them he was going to kill them if they called the police.

SUS-1 then went into VIC-1's bedroom and grabbed her house keys and a pair of blue and white Jordan Twills. When VIC-1 told SUS-1 he needed to leave, SUS-1 struck VIC-1 on her left eye, leaving an approximate 1 1/2 inch laceration and minor swelling. SUS-1 then fled out of the residence with VIC-1's belongings. SUS-1 was unable to be located. An EPO was issued and has not yet been served.

EPO INFORMATION:

PROTECTED PARTY: VIC-1

RESTRAINED PARTY: David Harvey

ISSUING JUDGE: Morgan

EXPIRATION DATE: 04/15/16

ISSUING COURT: San Joaquin County Superior

SERVED?: No

(**The following investigation was partially digitally recorded via a body worn camera and has been summarized below. The purpose of the summary is to render an overview of what was described; however, it is not a transcription of the recorded investigation or interview. The summary should not be viewed as containing only the important facts of the investigation or interview. It is intended to provide the reader with a general understanding of what was said and done; therefore, refer to the recording itself for the exact wording.**)

Report Officer

2421/ARISTA, ADRIANNA

Printed At

04/11/2016 08:44

Page 2 of 8

STOCKTON POLICE DEPARTMENT

16-13636

Supplement No
ORIG

SUBJECT INVOLVED

Involved	SUBJECT INVOLVED	Inv No	1	Type	Individual	DOB	MM	286078
Race	BLACK	Sex	FEMALE	DOB		Age	Juvenile?	No
Height	5'04"	Weight	158#	Hair Color	BROWN	Eye Color	Hazel	PRN
PRN	3108868	City	Stockton	State	CALIFORNIA			
Type	HOME	Address						
ZIP Code		Date	04/10/2016					
Type	Operator License	DOB						
Phone Type	Cell	Phone No						
Date	04/10/2016							

Involved	SUBJECT INVOLVED	Inv No	2	Type	Individual	DOB	MM	125605
Race	BLACK	Sex	MALE	DOB		Age	Juvenile?	No
Height	5'04"	Weight	200#	Hair Color	BLACK	Eye Color	BLACK	PRN
PRN	3108869	City	Stockton	State	CALIFORNIA			
Type	HOME	Address						
ZIP Code		Date	04/10/2016					
Type	Operator License	DOB						
Phone Type	Cell	Phone No						
Date	04/10/2016							

Involved	SUSPECT	Inv No	1	Type	Individual	Name	MM	1388725	Race	BLACK	Sex	MALE	
DOB	12/07/1984	Age	31	Juvenile?	No	Height	6'03"	Weight	250#	Hair Color	BLACK	Eye Color	BROWN
Hair Description	SHORT HAIR			Facial Features	MUSTACHE/GOATBE								
Weapon Type	HANDGUN			PRN	3108870								
Type	HOME	Address											
ZIP Code		Date	04/10/2016										
Type	Operator License	DOB											
Phone Type	Cell	Phone No	(510) 850-3081										
Date	04/10/2016												

Shirt
FITTED BLACK JACKET

Involved	VIC	Inv No	1	Name	See Confidential Page							
----------	-----	--------	---	------	-----------------------	--	--	--	--	--	--	--

Involved	VIC	Inv No	2	Name	See Confidential Page							
----------	-----	--------	---	------	-----------------------	--	--	--	--	--	--	--

Involved	VIC	Inv No	3	Name	See Confidential Page							
----------	-----	--------	---	------	-----------------------	--	--	--	--	--	--	--

Property	Prop #	Involved	1	Involved	STOLEN	Inv Date	04/10/2016	Recovered	No	Value	\$150.00	# Items	2
----------	--------	----------	---	----------	--------	----------	------------	-----------	----	-------	----------	---------	---

Description
PAIR OF BLUE AND WHITE JORDAN TWILLS SIZE 6

Personal accessories (incl serial jewelry)

Entered Date
04/10/2016

Entered Time
22:52

Result Transfer
Successful

Case #
1285 0411160841

Report Officer
2421/ARISTA, ADRIANNA

Printed At
04/11/2016 08:44

Page 3 of 8

STOCKTON POLICE DEPARTMENT

16-13636

Supplement No
ORIG

Property

Link	OWN	Involved	VIC	Inv No	1	Name	See Confidential Page				
Prop #	2	Involved	STOLEN	Inv Date	04/10/2016	In Custody?	No	Security	No	Value	\$5.00
Description	SCREEN DOOR KEY										
Article	Key	Brand	UNK	Entered Date	04/10/2016	Entered Time	22:53	RM Transfer	Successful	Control	1285 0411160842
Link	OWN	Involved	VIC	Inv No	1	Name	See Confidential Page				
Prop #	3	Involved	STOLEN	Inv Date	04/10/2016	In Custody?	No	Security	No	Value	\$5.00
Description	HOUSE KEY UNKNOWN BRAND										
Article	Key	Brand	UNK	Entered Date	04/10/2016	Entered Time	22:53	RM Transfer	Successful	Control	1285 0411160842
Link	OWN	Involved	VIC	Inv No	1	Name	See Confidential Page				
Modus Operandi											
Property Targeted	MISCELLANEOUS/CLOTHING, WIGS			Method of Entry	KICK DOOR		Point of Entry	DOOR		Entry Location	REAR
Weapon Used	PERSONAL (HANDS, ELBOWS, ETC)/FIREARMS			Prisoner Type	RESIDENCE MULTIPLE			Victim's Race			
Victim's Sex	FEMALE/FEMALE			Victim's Age	ADULT/JUVENILE			Victim's Action			AT HOME/INRESIDENCE
Suspect Action	ALONE/SUSPECT APPROACHED FROM THE REAR/MONEY DEMANDED/FAMILIAR WITH PREMISES/INJURY INFLICTED/MADE THREATS/PREPARED EXIT/SUSPECT ARMED/SELECTIVE IN LOOT/STRUCK VICTIM										
Crime Code(s)	ASSAULTS										

NOTIFICATION:

On 04/10/2016 at 2048 hours, I (Officer Arista 3B23) was dispatched to the reports of an unknown disturbance at [REDACTED]. I arrived on scene at 2051 hours.

INVESTIGATION:

Prior to my arrival at the listed location, the reporting party advised dispatch that a man went into her house and pulled a gun. This reporting party was 10 years old. The mother then got on the phone with dispatch and stated that the subject who came into her residence was a known male who resides in Oakland.

The reporting party described the subject as a 31 year old African American male, who was wearing all black clothing, and was armed with a gun. The reporting party stated that the male subject shattered the rear door and had already fled from the residence.

Upon arrival, I checked the nearby area for any subjects matching the reporting party's description. I did not observe any subjects matching the reporting party's description. Other officers on scene cleared the backyard but did not locate anyone.

I was then contacted by a female who identified herself as VIC-1. VIC-1 told me a guy she used to have a sexual relationship came over, kicked in her door, pointed a gun at her daughter (Later determined to be VIC-2), hit her and left with her house keys. I asked VIC-1 where she was hit and VIC-1 pointed to her left eye.

I immediately noticed that VIC-1 had an approximate 1 1/2 inch laceration to the inside of her left eye near her tear duct, with some minor swelling starting to arise beneath the laceration. The laceration was slightly bloody and red, but was not actively bleeding. I then asked VIC-1 to tell me what happened and she told me the following statement in summary:

[The following interview was digitally recorded and has been summarized below. The purpose of the summary is to render an overview of what was described; however, they are not transcriptions of the recorded interview. The summary should not be viewed as containing only the important facts of the interview. They are intended to

Report Officer	2421/ARISTA, ADRIANNA	Printed At	04/11/2016 08:44	Page 4 of 8
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STOCKTON POLICE DEPARTMENT

16-13636

Supplement No
ORIG

Name:

provide the reader with a general understanding of what was said; therefore, refer to the recording itself for the exact wording.

STATEMENT OF (VIC-1):

VIC-1 advised me that she met SUS-1 David on social media. VIC-1 did not know SUS-1 David's last name, but knew his birthday was on December 7th, and that he was 31 years old. SUS-1 David lived in West Oakland and goes by the street name "Ticket."

VIC-1 and SUS-1 David were in a sexual relationship for a few months. I asked VIC-1 the precise number of months, but she just said it was only a few months. VIC-1 advised me that she and SUS-1 David were not boyfriend and girlfriend, and just "Had fun" together.

VIC-1 stated that she broke off her relationship with SUS-1 David a long time ago, and had found out that he was married. VIC-1 believes that SUS-1 David is mad because VIC-1 didn't want to see him anymore.

VIC-1 advised me that she was in her bedroom when she heard aloud banging sound. VIC-1 thought the banging sound were coming from the kids [VIC-2 and VIC-3] playing. VIC-1 walked out of her bedroom and asked VIC-2, "What is y'all doin?" VIC-1 then realized that VIC-2 and VIC-3 were not making the banging noise.

VIC-1 then saw SUS-1 David walk into her laundry room. VIC-1 said that SUS-1 was pointing a gun at her. SUS-1 asked VIC-1, "Where's the money? Where's the money at?" VIC-1 told SUS-1 David, "There ain't no fuckin money what you talkin about?"

VIC-1 said her daughter [VIC-2 (sitting on couch in living room)] told SUS-1, "If you don't leave, I'm going to call the police." SUS-1 David then pointed his gun at VIC-2 and VIC-3 [Who was next to VIC-2] and said, "If you call the police I'm going to kill you."

VIC-1 said that she ran over and got in between SUS-1 David and the kids [VIC-2 and VIC-3]. VIC-1 told SUS-1 David, "I know you not tryin to sit here and hurt my kids." VIC-1 said SUS-1 David again asked where his money was.

SUS-1 David then went into VIC-1's bedroom and grabbed VIC-1's house keys [Front door key and screen door key] and her blue and white Jordan Twill shoes. SUS-1 David told VIC-1, "You better not call the police."

VIC-1 stated that SUS-1 David then punched her one time with a closed fist on her left eye. SUS-1 David then walked back towards the door he kicked down, and left the house.

VIC-1 was unsure where SUS-1 David went, or if he left walking or driving.

(End of Statement)

INVESTIGATION (continued):

While I was speaking with VIC-1, her father, SUB-2 [REDACTED] was walking down the stairs towards us. SUB-2 [REDACTED] was currently on the phone, and his conversation was on speaker phone. SUB-2 [REDACTED] was talking very loudly and using swear words to the male he was speaking to on the phone. SUB-2 [REDACTED] then advised me that he was speaking to SUS-1 David on the phone, and that SUS-2 David admitted to everything even the gun.

Another unit on scene remained with SUB-2 [REDACTED] while I finished speaking with the victims.

I then asked VIC-2 what happened, and she told me the following statement in summary:

["The following interview was digitally recorded and has been summarized below. The purpose of the summary is to render an overview of what was described; however, they are not transcriptions of the recorded interview. The summary should not be viewed as containing only the important facts of the interview. They are intended to provide the reader with a general understanding of what was said; therefore, refer to the recording itself for the exact wording."]

STATEMENT OF (VIC-2):

VIC-2 said she and VIC-3 were in the kitchen eating when she heard a loud boom on the door and felt shaking.

Report Officer 2421/ARISTA, ADRIANNA	Printed At 04/11/2016 08:44	Page 5 of 8
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STOCKTON POLICE DEPARTMENT

16-13636

Supplement No
ORIG

Narrative

VIC-2 said she thought it was an earthquake. VIC-2 said her mom [VIC-1] then walked into the kitchen and asked what was going on. VIC-2 told her mom [VIC-1] that it wasn't them making the noise.

VIC-2 said she then saw a man come in through the laundry room door, and pulled VIC-1 into the laundry room. VIC-2 said she heard the man [SUS-1] talking. VIC-2 then told SUS-1 David to leave or she was going to call the police. SUS-1 David then pointed a gun at her and VIC-3 and said, "You better not call the police or I'll kill you."

VIC-2 said that her mom [VIC-1] told SUS-1 David, "Can you not hurt her?" VIC-2 then saw SUS-1 David go into her mom's room [VIC-1], and grabbed her mom's shoes and keys. VIC-2 then saw SUS-1 David punch her mom.

VIC-2 said SUS-1 David left the house after he hit her mom [VIC-1].

(End of Statement)

INVESTIGATION (continued):

After speaking with VIC-2, I asked VIC-3 if she could tell me what happened. VIC-3's mother, SUB-1 [REDACTED] [SUB-2's girlfriend], was standing near VIC-3. SUB-1 [REDACTED] advised me that her daughter [VIC-3] was hard of hearing, and told me she would help with obtaining her statement. SUB-1 Jennifer assisted with obtaining the following statement:

["The following interview was digitally recorded and has been summarized below. The purpose of the summary is to render an overview of what was described; however, they are not transcriptions of the recorded interview. The summary should not be viewed as containing only the important facts of the interview. They are intended to provide the reader with a general understanding of what was said; therefore, refer to the recording itself for the exact wording."]

STATEMENT OF (VIC-3):

VIC-3 said that she didn't know what she was feeling. She and VIC-2 were in the living room when she started feeling the vibrations. After she felt the vibrations, a man [SUS-1 David] came in and she saw a gun out. At first the man [SUS-1 David] was pointing the gun at all of them [VIC-1, VIC-2 and VIC-3], then he put it in his waist.

The man [SUS-1 David] told them not to call the police or he would kill them. VIC-3 saw the man [SUS-1 David] snatch VIC-1's shoes then hit VIC-1. The man [SUS-1 David] then left out of the broken door.

(End of Statement)

INVESTIGATION (continued):

After speaking with VIC-3, SUB-2 [REDACTED] advised me that SUS-1 David was calling his phone. I answered SUB-2 [REDACTED] phone and identified myself as a Stockton Police Officer. SUS-1 David said that VIC-1 was lying and that he did not have a gun. SUS-1 David then said that VIC-1 owed him money. I asked SUS-1 David how much money VIC-1 owed him and he said \$1000 dollars.

I then advised SUS-1 David that since he was a victim, in order to file a report he would need to return to the residence so I could properly obtain his statement and verify his ID. SUS-1 David advised me that he was around the corner, but would not verify where. SUS-1 David then ended up the call.

VIC-1 then escorted Officer Freer and I into her residence.

[VIC-1 residence in a triplex house. VIC-1's door is in the center of the house if facing the location. There is a door/screen door that lead up a large staircase into VIC-1's residence. As you get to the top of the stairs, there is a bedroom directly to the right [West], and a living room directly to the left [East]. Directly south of the living room was the kitchen.]

There was a door on the west wall which led to VIC-1's bedroom. South of the kitchen was the laundry room, with a very small room directly to the east, which contained the rear door. As you exit the rear door, there is a large staircase which leads you back onto ground level/the backyard].

VIC-1 showed me where the rear door was through her laundry room. The rear door was completely broken off of the hinges and was resting on some items that were stored on the floor. VIC-1 advised me that the property owner was currently on his way to her house to help fix the door and change the locks since SUS-1 David took her

STOCKTON POLICE DEPARTMENT

16-13636

Supplement No
ORIG

Narrative

house keys.

VIC-1 then grabbed her cell phone and showed me a video of the shoes she was wearing today. VIC-1 advised me that those were the shoes that SUS-1 David had taken. VIC-1 then opened up her SNAPCHAT application, and showed me a video of SUS-1 David. VIC-1 advised me that SUS-1 David's SNAPCHAT screen name was "Ticket Dave."

I asked VIC-1 if she wanted an medics to check out the laceration she sustained on her left eye. VIC-1 declined medical attention and said she would be fine. I then explained and offered VIC-1 and EPO [Emergency Protective Order]. VIC-1 advised me that she wanted to obtain an EPO.

Sgt. Kwan was advised, I then contacted the on-call judge [Judge Morgan], who approved the following EPO:

EPO INFORMATION:

PROTECTED PARTY: VIC-1

RESTRAINED PARTY: David Harvey

ISSUING JUDGE: Morgan

EXPIRATION DATE: 04/15/16

ISSUING COURT: San Joaquin County Superior

SERVED?: No

After obtaining the listed EPO, I issued VIC-1 a Mares's card and her copy of the EPO. I advised VIC-1 to contact the Stockton Police Department if SUS-1 David showed up again or tried to contact her.

FET was requested to photograph the scene.

After conducting my investigation, I went to the Stockton Police Department to conduct further follow-up. I contacted the on-duty Headquarter's clerk (#2486) and requested Oakland Police Department Records.

I spoke with records clerk Virginia. I provided her with SUS-1 David's first name and birth date [12/07/84]. Virginia advised me that she was able to locate SUS-1 David. Harvey 12/07/1984 [REDACTED] Oakland, Ca. I asked Virginia if she would be able to locate any vehicles registered to SUS-1 David, or if she had a current photo. Virginia advised me that she was unable to locate either.

I then had Headquarters Clerk (#2406) run SUS-1 David's name in DMV and Cal-Photo. We were able to locate SUS-1 David's driver's license photo [See attached]. The driver's license photo matched the same subject that I saw in the SNAPCHAT video that VIC-1 had shown me earlier.

After confirming SUS-1 David's identification, I updated his information on the EPO. I then gave the EPO to Headquarter's Clerk (#2486), so it could be entered into the system.

At 2204 hours I contacted dispatch and had them connect me to SUS-1 David's cell phone number [REDACTED] 850-3081]. A male answered the phone, but was impersonating a female. Based on my experience as female, I was able to hear the deepness and masculinity in the voice, even though he was trying to sound like a high pitched female.

The male said "Heselllooooo?" I identified myself as Officer Arista and stated that I was looking for David. The male then said, "This isn't David." The call then ended.

ATTACHMENTS:

-EPO Copies

-SUS-1 David's ID photo

EVIDENCE:

-Refer to FET photographs and body cam footage

DISPOSITION:

Open, Suspect contact needed.

Report Officer 2421/ARISTA, ADRIANNA	Printed At 04/11/2016 08:44	Page 7 of 8
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STOCKTON POLICE DEPARTMENT

16-13636

Supplement No
ORIG

Confidential

Do not distribute

VICTIM

Involved VICTIM	Inv No 1	Type Individual					LN 687528	Race BLACK
Sex FEMALE	DOB [REDACTED]	Age [REDACTED]	Juvenile? No	Height [REDACTED]	Weight 150#	Hair Color BLACK	Eye Color BROWN	Confidential Requested
Means of Attack FIREARM/PHYSICAL-HANDS, FISTS, FEET				Extent of Injury LACERATION/CUTTING		Dom Violence YES		PRN 3108871
Type HOME	Address [REDACTED]				City Stockton		State CALIFORNIA	
ZIP Code [REDACTED]	Date 04/10/2016							
Type Operator License	ID No [REDACTED]				CLB CALIFORNIA			
Phone Type Cell	Phone No [REDACTED]				Date 04/10/2016			

Involved VICTIM	Inv No 2	Type Individual					LN 1388721	Race BLACK
Sex FEMALE	DOB [REDACTED]	Age [REDACTED]	Juvenile? Yes	Height [REDACTED]	Weight [REDACTED]	Hair Color BLACK	Eye Color BROWN	Confidential [REDACTED]
Means of Attack FIREARM				Extent of Injury NO VISIBLE INJURY		Dom Violence NO		
PRN 3108872								
Type HOME	Address [REDACTED]				City Stockton		State CALIFORNIA	
ZIP Code [REDACTED]	Date 04/10/2016							
Phone Type Home	Phone No [REDACTED]				Date 04/10/2016			

Involved VICTIM	Inv No 3	Type Individual					LN 720819	Race BLACK
Sex FEMALE	DOB [REDACTED]	Age [REDACTED]	Juvenile? No	Height [REDACTED]	Weight [REDACTED]	Hair Color [REDACTED]	Eye Color [REDACTED]	Confidential [REDACTED]
Means of Attack FIREARM				Extent of Injury NO VISIBLE INJURY		Dom Violence NO		
PRN 3108873								
Type HOME	Address [REDACTED]				City Stockton		State CALIFORNIA	
ZIP Code [REDACTED]	Date 04/10/2016							
Phone Type Home	Phone No [REDACTED]				Date 04/10/2016			

STOCKTON POLICE DEPARTMENT



22 E MARKET ST.
STOCKTON, CA 95202

(209) 937-8495

16-13636

Supplement No
0001

Reported Date
04/10/2016
Reported Time
23:23
Member/Capt ID#
LAMBERT, SARAH

Agency		STOCKTON POLICE DEPARTMENT		DR	16-13636	Supplement No	0001	Reported Date	04/10/2016	Reported Time	23:23	CAD Call No	161010830
Status		EIT REPORT TO FOLLOW		Reported Typ		ROBBERY							
Location				City		Stockton		ZIP Code				Rep Dist	
District	CC	Backer	CS	From Date	04/10/2016	From Time	20:35	Member/Capt ID#	2456/LAMBERT, SARAH				
Assignment		Field Evidence Section-1st Watch Phase 2		Entered by		2456							
Assignment		Field Evidence Section-1st Watch Phase 2		RMS Transfer		Successful		Prop Trans Stat		Successful			
Approving Officer		1285		Approval Date		04/11/2016		Approval Time		08:46:41			
Route - Domestic Violence		Yes											
Ment													
Physical Evidence		PHOTOS		Crime Scene		ASSAULTS							
N													

NOTIFICATION:

On 04/10/2016 I (EIT S. LAMBERT #2456) was dispatched to [REDACTED] to take photographs.
I arrived at 2157 hours.

INVESTIGATION:

Upon arrival, I took photographs of an injury to the face of the adult female victim. I took photographs of a broken/fixed rear residence door.

I cleared at 2203 hours.

EVIDENCE:

(Photographs)

I turned in frames 1-10 to the Photo Lab Unit.

1 **DEMAS LAW GROUP, P.C.**

2 John N. Demas, Attorney at Law, SBN 161563

3 Brad A. Schultz, Attorney at Law, SBN 242512

4 701 Howe Avenue, Suite A-1

5 Sacramento, CA 95825

6 Tel: (916) 444-0100

7 Fax: (916) 444-8250

8 Attorney for Plaintiffs,

9 **FEBE TABOTABO, ANDRE TABOTABO, a minor, TITUS TABOTABO II, and**
10 **NATIVIDAD TABOTABO**

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF SAN JOAQUIN**

13 **FEBE TABOTABO; ANDRE**
14 **TABOTABO, a minor, by and through his**
15 **Guardian ad Litem, Febe Tabotabo; TITUS**
16 **TABOTABO II; and NATIVIDAD**
17 **TABOTABO,**

18 Plaintiffs,

19 vs.

20 **CITY OF STOCKTON; NESTOR**
21 **VELASQUEZ; JOHN STRAWDER; and**
22 **DOES 1 through 100, inclusive,**

23 Defendants.

CASE NO.

STK-CV-

WAT 2018- 3998

COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES

[Damages in Excess of \$25,000.00]

THIS CASE HAS BEEN ASSIGNED TO
JUDGE ROGER ROSS IN
DEPARTMENT 11B FOR ALL PURPOSES,
INCLUDING TRIAL

e by Fax

24 COME NOW Plaintiffs FEBE TABOTABO (hereinafter "FEBE"), ANDRE
25 TABOTABO, a minor, by and through his Guardian ad Litem, Febe Tabotabo (hereinafter
26 "ANDRE"), TITUS TABOTABO II (hereinafter "TITUS"), and NATIVIDAD
27 TABOTABO (hereinafter "NATIVIDAD"), and allege against Defendants CITY OF
28 STOCKTON (hereinafter "CITY"), NESTOR VELASQUEZ (hereinafter

1 "VELASQUEZ"), JOHN STRAWDER (hereinafter "STRAWDER"), and DOES I
2 through 100, inclusive, and each of them, as follows:

3 1. Defendant CITY is, and at all times mentioned herein was, a government agency
4 duly organized and existing under the laws of the State of California and situated in the
5 County of San Joaquin, and therefore venue is proper in San Joaquin County.

7 2. At all times mentioned herein, VELASQUEZ was the agent, employee, and/or
8 representative of CITY, and in doing the acts hereinafter described, acted within the course
9 and scope of his authority and employment as such agent, employee, and/or representative,
10 and with the permission, consent, and/or knowledge of CITY.

12 3. At all times mentioned herein, STRAWDER was the agent, employee, and/or
13 representative of CITY, and in doing the acts hereinafter described, acted within the course
14 and scope of his authority and employment as such agent, employee, and/or representative,
15 and with the permission, consent, and/or knowledge of CITY.

17 4. This action arises out of the laws of the State of California, including, but not limited
18 to, Government Code § 815.2 et seq.

20 5. At all times mentioned herein, Plaintiffs FEBE, ANDRE, TITUS, and NATIVIDAD
21 are heirs of TITUS TABOTABO III (hereinafter "DECEDENT"), pursuant to Code of
22 Civil Procedure §377.60, and were related to the DECEDENT as follows:

<u>NAME</u>	<u>RELATIONSHIP</u>
FEBE TABOTABO	WIFE
ANDRE TABOTABO, a minor	SON

1 TITUS TABOTABO II

FATHER

2 NATIVIDAD TABOTABO

MOTHER

3 6. Plaintiffs FEBE, ANDRE, TITUS, and NATIVIDAD are the sole heirs of
4 DECEDENT.

5
6 7. This Complaint arises from the motor vehicle collision described below, resulting
7 in the death of DECEDENT.

8
9 8. The true names and capacities of Defendants, whether individual, corporate,
10 associate or otherwise, sued herein as DOES 1 through 100, inclusive, are presently
11 unknown to Plaintiffs, who therefore sue such Defendants by fictitious names, pursuant to
12 Code of Civil Procedure section 474. Plaintiffs are informed and believe and thereon allege
13 that the fictitiously named Defendants, and each of them, sued as DOES 1 through 100,
14 inclusive, are in some manner legally responsible to Plaintiffs for the events and
15 happenings herein referred to, and proximately caused damages to Plaintiffs as set forth
16 herein. Plaintiffs will seek leave of court to amend this Complaint to insert the true names
17 and capacities of said fictitiously named Defendants, and each of them, when the same
18 have been ascertained.
19
20

21
22 9. Plaintiffs are informed and believe and on that basis allege that at all times relevant
23 herein, each of the Defendants, including each fictitiously named Defendant, was the
24 partner, agent, joint venture, co-conspirator, lessor, lessee, servant, and/or employee of
25 each of the remaining Defendants, and in doing the acts or things alleged herein were acting
26 within the course and scope of such partnership, agency, employment, and/or other
27
28

1 relationship stated herein, and in doing the acts herein alleged, was acting with the consent,
2 approval, ratification, permission and/or authorization of each of the remaining
3 Defendants.

4
5 **FIRST CAUSE OF ACTION**
6 **(Negligence-Wrongful Death)**

7 10. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 9 as though
8 fully set forth herein.

9 11. At all times mentioned herein, Dr. Martin Luther King Jr. Boulevard was and is a
10 public road and/or highway located in the County of San Joaquin, State of California.

11 12. At all times mentioned herein, Airport Boulevard was and is a public road and/or
12 highway located in the County of San Joaquin, State of California.

13 13. On or about, June 28, 2017, DECEDENT was safely, lawfully and carefully
14 operating a certain 2017 Acura MDX along and upon northbound Airport Boulevard, in
15 the County of San Joaquin, State of California.

16 14. At all times mentioned herein, Defendants CITY, VELASQUEZ, STRAWDER,
17 and DOES 1 through 100, inclusive, and each of them, were operating and/or owned a
18 marked patrol SUV along and upon eastbound Dr. Martin Luther King Jr. Boulevard, west
19 of Airport Way, in the County of San Joaquin, State of California, with the consent,
20 permission, and knowledge of each of the remaining Defendants, and each of them,
21 whether fictitiously named or otherwise.

22 15. At the above said time and place, Defendants CITY, VELASQUEZ, STRAWDER,
23 and DOES 1 through 100, inclusive, and each of them, individually and/or while acting by
24

1 or through their agents, employees, joint-ventures, partners, lessors, lessees, subagents,
2 bailor, bailee, and/or co-conspirators, named or unnamed as Defendants herein, while
3 acting within the course and scope of their employment, agency, individual capacity or
4 other relationship, so negligently, carelessly, recklessly, and/or unlawfully owned, leased,
5 rented, entrusted, managed, maintained, operated, controlled, inspected, repaired, failed to
6 warn of the vehicle's condition, and/or drove said marked patrol SUV along and upon
7 eastbound Dr. Martin Luther King Jr. Boulevard, west of Airport Way, in violation of
8 California Vehicle Code Sections, including, but not limited to 22350 and 21453(a), so as
9 to cause it to collide with DECEDENT's 2017 Acura described above. As a direct and
10 proximate result of the negligence, carelessness, recklessness, and/or other wrongdoings
11 of Defendants CITY, VELASQUEZ, STRAWDER, and DOES 1 through 100, inclusive,
12 and each of them, DECEDENT died on or about June 28, 2017, due to severe traumatic
13 brain injury, displaced atlanto-occipital disarticulation, and blunt force trunk trauma.

14 16. At all times relevant herein, FEBE was the wife of DECEDENT, and as such, prior
15 to the incident described above, benefited from DECEDENT'S love, companionship,
16 comfort, care, affection, financial support, society, moral and emotional support, and/or
17 solace.

18 17. At all times relevant herein, ANDRE was the son of DECEDENT, and as such, prior
19 to the incident described above, benefited from DECEDENT'S love, companionship,
20 comfort, care, affection, financial support, society, moral and emotional support, and/or
21 solace.

1 18. At all times relevant herein, TITUS was the father of DECEDENT, and as such,
2 prior to the incident described above, benefited from DECEDENT'S love, companionship,
3 comfort, care, affection, financial support, society, moral and emotional support, and/or
4 solace.
5

6 19. At all times relevant herein, NATIVIDAD was the mother of DECEDENT, and as
7 such, prior to the incident described above, benefited from DECEDENT'S love,
8 companionship, comfort, care, affection, financial support, society, moral and emotional
9 support, and/or solace.
10

11 20. As a further proximate result of the negligence, carelessness, recklessness, and/or
12 other wrongdoings of Defendants CITY, VELASQUEZ, STRAWDER, and DOES 1
13 through 100, inclusive, and each of them, Plaintiffs have sustained damages for funeral and
14 other related expenses in an amount presently unknown. Plaintiffs will seek leave of court
15 to plead and prove these damages according to proof at time of trial, together with interest
16 and/or prejudgment interest thereon at the lawful legal rate.
17

18 21. As a further proximate result of the negligence, carelessness, recklessness, and/or
19 other wrongdoings of Defendants CITY, VELASQUEZ, STRAWDER, and DOES 1
20 through 100, inclusive, and each of them, Plaintiffs have sustained incidental and/or
21 consequential damages in an amount presently unknown. Plaintiffs will seek leave of court
22 to plead and prove these damages according to proof at time of trial, together with interest
23 and/or prejudgment interest thereon at the lawful legal rate.
24
25
26
27
28

1 WHEREFORE, Plaintiffs pray for judgments against Defendants, and each of them,
2 as hereinafter set forth.

3 **SECOND CAUSE OF ACTION**
4 **(Respondent Superior)**

5 22. Plaintiffs re-allege and incorporate by reference Paragraphs 1 through 21 as though
6 fully set forth herein.

7
8 23. Plaintiffs are informed and believe and thereon allege that at all times mentioned
9 herein, Defendants VELASQUEZ, STRAWDER and DOES 1 through 50, inclusive, and
10 each of them, was the officer, agent, representative, partner, contractor, sub-contractor, and
11 or employee of CITY, and in conducting the aforementioned acts, was acting within the
12 course and scope of said ownership, agency, partnership, and/or employment, and with the
13 permission, knowledge, and/or consent of CITY.
14

15
16 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them,
17 as follows:

18 1. For general damages in excess of the minimum jurisdiction of this Court,
19 according to proof at time of trial;

20 2. For interest and/or prejudgment interest on all damages sought and/or
21 incurred herein, at the legal, lawful rate;

22 3. For funeral and burial expenses;

23 4. For incidental and consequential expenses;

24 5. For costs of suit incurred herein, and;

25 6. For such other and further relief as the Court may deem proper.
26
27
28

1
2 DATED: April 4, 2018

DEMAS LAW GROUP, P.C.

3
4 BY: 

5 John N. Demas
6 Attorney for Plaintiffs, FEBE
7 TABOTABO, ANDRE TABOTABO, a
8 minor, by and through his Guardian ad
9 Litem, Febe Tabotabo, TITUS
10 TABOTABO II and NATIVIDAD
11 TABOTABO
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8 Attorney for Plaintiff

FILED
SUPERIOR COURT - STOCKTON

2018 APR 13 AM 11:04

ROSA JUNQUEIRO, CLERK

BY Diana Edwards
DEPUTY

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

10 STOCKTON BRANCH

11 SKYE JONES, ROBERT JONES

12 Plaintiffs,

13 vs.

14 CITY OF STOCKTON; CITY OF LODI;
15 STATE OF CALIFORNIA and DOES 1
16 through 100,

17 Defendants.

Case No.:

STK-CV-UCR-2018-4296

COMPLAINT

THIS CASE HAS BEEN ASSIGNED TO
JUDGE BARBARA A. KRONLUND IN
DEPARTMENT 10D FOR ALL PURPOSES,
INCLUDING TRIAL.

18 Plaintiff complains of Defendants as follows:

19 **I. GENERAL ALLEGATIONS**

20 **Plaintiff Skye Jones: Negligent and Reckless Conduct by all Defendants**

21 1. The acts and or failures to act as hereinafter alleged occurred within the
22 County of San Joaquin, State of California;

23 2. Plaintiff Skye Jones and Robert Jones are individuals who are married to
24 each other and have been married to each other at all relevant times

25 3. DOES 1 through 25 are fictitiously named individual defendants who are,
26 in some fashion, liable for the acts and failures to act as hereinafter alleged, but who are
27 believed to have driven negligently and recklessly or participated in said driving conduct
28

1 as will be shown according to proof. Plaintiff's are ignorant of the true identity capacity
2 and basis of liability of such fictitiously named defendants and pray leave to amend his
3 complaint with appropriate charging allegations upon ascertaining the identity, capacity
4 and basis of liability of such defendants.
5

6 3(a) DOES 26 to 50 are persons who are supervisors or trainers of
7 DOES 1 to 25, whose true identity capacity and basis of liability are unknown to plaintiff.
8 Plaintiff prays leave to amend this complaint upon ascertaining the true identity and
9 capacity of such fictitiously named defendants
10

11 3(b) DOES 51 to 100 are potential defendants whose identity, status,
12 and basis of liability are unknown to plaintiff. Plaintiff prays leave to amend this
13 complaint with appropriate charging allegations upon ascertaining the true identity,
14 status, and basis of liability
15

16 4. In doing the acts as hereinafter alleged, each defendant was acting as an
17 agent of each other defendant and acting within the scope of said agency, and
18 moreover, each defendant ratified the actions of each other defendant.
19

20 5. On or about April 4, 2017 plaintiff Skye Jones was lawfully traveling on the
21 public ways of the City of Stockton.
22

23 6. Plaintiff Skye Jones was traveling on Hammer Lane at which time
24 employees of the city of Lodi, the City of Stockton, and the California Highway Patrol as
25 employees of the State of California were engaging in a reckless and wanton high
26 speed chase of individuals who were possible law breakers. The suspects created no
27 danger of violent injury to members of the public, such as plaintiff. The reckless pursuit
28

1 by the participating law enforcement officers, as will be shown according to proof,
2 created a significant risk of injury and was quite dangerous.

3 7. Notwithstanding the lack of immediate and clear and present danger, the
4 public employees drove in a reckless and dangerous fashion, exceeding any need for
5 law enforcement and endangering the public for no justifiable reason, resulting in death
6 and serious injury to the suspects as well as serious injury to plaintiff and others.

7
8 8. The chase was taking place in a vicinity of a school, whose students were
9 being released, creating significant pedestrian traffic in the same location as the chase
10 and the conduct, under the circumstances, was irrational, without justification and
11 constituted a violation of law and all applicable safety standards.

12
13 9. In addition, the motives of the officer and officers went beyond any
14 legitimate law-enforcement goal.

15
16 10. As a direct and proximate result of the wrongful conduct of the officers and
17 the agents of the City of Lodi, the City of Stockton, and the California Highway Patrol
18 plaintiff, Skye Jones, was involved in a collision and was physically injured as a be
19 shown according to proof.

20
21 11. As a direct and possible result of said physical injuries plaintiff Skye Jones
22 has incurred in the past and will incur in the future medical care expenses as a be
23 shown according to proof.

24 12. As a further direct and possible result of said physical injuries plaintiff
25 Skye Jones has lost earnings and lost earning capacity as will be shown according to
26 proof.
27
28

13. As a further direct result plaintiff has suffered emotional distress damages, pain and suffering, loss of enjoyment of life as will be shown according to proof.

14. Each plaintiff has submitted claims with the city of Stockton city of Lodi and state of California which are attached to this complaint and incorporated in full by this reference. All claims were timely. All three public entities have within six months last past denied said claims either directly or by operation of law. Wherefore please pray for relief as set forth below

Second Cause of Action

Robert Jones, Loss of Consortium as to all Defendants

15. Plaintiff Robert Jones incorporates by reference Paragraphs 1 to 14 as fully incorporated as set forth herein.

16. Plaintiff Robert Jones has suffered loss of consortium as a direct and proximate result of the conduct of the officers and the cities and highway patrolman as set forth above action. The behavior of the individual officers was negligent, and was not immune and at times grossly negligent as a be shown according to proof.

Third Cause of Action

Violation of 42 U.S Code Section 1983 by Skye Jones and Robert Jones

17. Plaintiffs incorporate by reference Paragraphs 1 to 16 as fully set forth herein

18. In doing the acts as set forth here in individual officers were acting in their official capacity as employees of the city of Stockton city of Lodi and the State of California

1 19. The actions has alleged above, constituted a violation of the fourth and
2 14th amendments and accordingly, were violation of 42 US code section 1983

3 20. Plaintiffs have engages the services of Michael F Babitzke attorney-at-law
4 to represent their interests and will incur reasonable attorney fees
5

6 **Fourth Cause of Action**

7 **Skye Jones, Robert Jones Against State of California, City of Stockton, City of**
8 **Lodi**

9 21. Plaintiffs incorporate, by reference, all allegations set forth above as fully
10 as set forth herein.
11

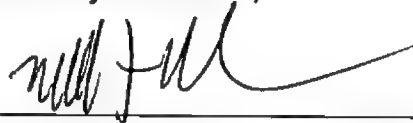
12 22. By reason of established policies of the State of California, the City of
13 Stockton, and City of Lodi and the chase policies and/or lack thereof; the training of their
14 law enforcement personnel, the equipping or lack thereof of law enforcement policies
15 and other facts as will be shown according to proof. Each public entity is liable to each
16 plaintiff for violations of 42 U.S.C. 1983.
17

18 WHEREFORE plaintiff prays for relief as follows:

- 19 1. For damages as to each plaintiff as a be shown according to proof
20 2. For reasonable attorneys fees
21 3. For cost of suit
22

23 DATED: April 13, 2018

Respectfully submitted,

24 

25 _____
26 Michael F. Babitzke
27 Attorney for Plaintiffs
28

EXHIBIT A



CITY OF STOCKTON

HUMAN RESOURCES DEPARTMENT
400 E. Main Street, 3rd Floor • Stockton, CA 95202
Phone: 209 / 937-8233 • Fax 209 / 937-8558 • www.stocktongov.com

November 22, 2017

Michael Babitzke
6 S. El Dorado St., Suite 305
Stockton, CA 95202

RECEIVED
11/28/17

RE: Claimants: Robert Jones
City File No.: 2016-2017-0721-02

Notice Is Hereby Given that the claim you filed with the Office of the City Clerk for the City of Stockton on October 4, 2017 was rejected by Operation of Law on November 20, 2017. Government Code Section 913 requires the following warning be given when a claim is rejected.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action in a municipal or superior court of the State of California on this claim. See Government Code Section 945.6. This warning applies only to State claims, and does not apply to statutes of limitations for Federal causes of action.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

By

Ken Minas
Liability Claims

RECEIVED
11/28/17



received
11/21/17

STATE OF CALIFORNIA)
)
COUNTY OF SAN JOAQUIN)

PROOF OF SERVICE

ss:

I am a citizen of the United States and am employed in the County of San Joaquin. I am over the age of eighteen (18) years and am not a party to the within above-titled action. My business address is 400 E. Main St., 3rd Floor, Stockton, CA 95202.

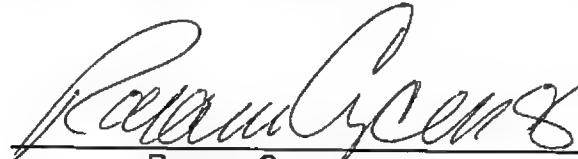
I am readily familiar with the City of Stockton's practice for collection and processing of correspondence for mailing with the United States Postal Service and that the correspondence would be deposited with the United States Postal Service in the County of San Joaquin, California that same day in the ordinary course of business.

On the date noted below, I served the within **Notice of Rejection** on the persons interested in said action by placing true copies thereof enclosed in sealed envelopes in the designated area for outgoing mail addressed as set forth below:

Michael Babitzke
6 S. El Dorado St., Suite 305
Stockton, CA 95202

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Executed at Stockton, California.


Raeann Cycepas
11-22-2017
Date

received
11/28/17



File
Skye Jones
Babitzke
Saw

CITY OF STOCKTON

HUMAN RESOURCES DEPARTMENT
400 E. Main Street, 3rd Floor • Stockton, CA 95202
Phone: 209 / 937-8233 • Fax 209 / 937-8558 • www.stocktongov.com

November 22, 2017

Michael Babitzke
6 S. El Dorado St., Suite 305
Stockton, CA 95202

Received
11/28/17

RE: Claimants: Skye Jones
City File No.: 2016-2017-0721-01

Notice Is Hereby Given that the claim you filed with the Office of the City Clerk for the City of Stockton on October 4, 2017 was rejected by Operation of Law on November 20, 2017. Government Code Section 913 requires the following warning be given when a claim is rejected.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action in a municipal or superior court of the State of California on this claim. See Government Code Section 945.6. This warning applies only to State claims, and does not apply to statutes of limitations for Federal causes of action.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

By K Minas
Ken Minas
Liability Claims

11/28/17



STATE OF CALIFORNIA)
COUNTY OF SAN JOAQUIN)

PROOF OF SERVICE

SS:

received
11/28/17

I am a citizen of the United States and am employed in the County of San Joaquin. I am over the age of eighteen (18) years and am not a party to the within above-titled action. My business address is 400 E. Main St., 3rd Floor, Stockton, CA 95202.

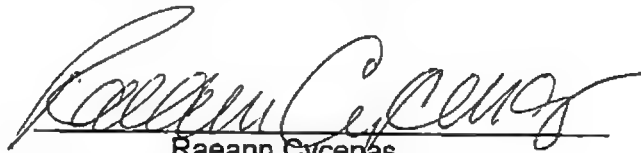
I am readily familiar with the City of Stockton's practice for collection and processing of correspondence for mailing with the United States Postal Service and that the correspondence would be deposited with the United States Postal Service in the County of San Joaquin, California that same day in the ordinary course of business.

On the date noted below, I served the within **Notice of Rejection** on the persons interested in said action by placing true copies thereof enclosed in sealed envelopes in the designated area for outgoing mail addressed as set forth below:

Michael Babitzke
6 S. El Dorado St., Suite 305
Stockton, CA 95202

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Executed at Stockton, California.



Raeann Cyenas
11-22-2017

Date

received
11/28/17

CLAIM FOR DAMAGES

CITY OF STOCKTON

Note: Claims for bodily injury or death, damage to personal property, or damage to growing crops may be filed on this form, not later than six months after the occurrence out of which the claims arose. All other claims must be filed not later than one year after the occurrence out of which the claims arose. (Refer to California Government Code sections 910.4 and 911.2)

DIRECTION: The original claim must be filed with the City of Stockton City Clerk's Office, 425 North El Dorado Street, Stockton, California 95202. Retain the yellow copy for your records.

NAME OF CLAIMANT: JONES, SKYE Date of Birth 5/18/1974
(Last) (First) (Middle)
HOME ADDRESS/PHONE: 1414 Mill Way Stockton, CA (209) 481-1343
(Number/Street) (City/State/Zip Code) (Phone Number)
BUSINESS ADDRESS/PHONE: 6 S. El Dorado St., Suite 305, Stockton, CA 95202 (209) 465-5722
(Number/Street) (City/State/Zip Code) (Phone Number)

DIRECTION: Indicate to which address you wish notice sent ☐ HOME ☒ BUSINESS
WHEN DID INJURY OR DAMAGE OCCUR? 4/4/2017 Tuesday 7:50 p.m.
(Month/Day/Year) (Day of Week) (Time of Day)
WHERE DID INJURY OR DAMAGE OCCUR? Hammer Lane and Alexandria Place, Stockton, California
Street address, intersecting streets, or other location

HOW DID INJURY OR DAMAGE OCCUR?

Describe accident or occurrence in complete detail)

California Highway Patrol (CHP) conducted a high speed pursuit of a culprit that stole a purse from Costco in Lodi, California. CHP was notified to take corrective action and failed to take the corrective action which resulted in the high speed chase continuing to Stockton, California on city streets in the middle of the day and near a school zone. Claimant's wife, Skye Jones, was injured during the CHP's high speed pursuit of the culprit.

NAME OF CITY EMPLOYEE(S) INVOLVED? Employees unknown

WHAT ACTION OR INACTION OF CITY EMPLOYEE(S) CAUSED YOUR INJURY OR DAMAGES? Negligent high speed chase.

WHAT INJURIES OR DAMAGES DID YOU SUFFER? Claimant suffered massive injuries to right wrist, right ankle, right foot, and right leg.

TOTAL AMOUNT CLAIMED: ☒ Unlimited case—over \$25,000.00 ☐ Limited case—\$25,000.00 or less

If under \$10,000.00, please specify amount \$

DIRECTION: Sign and date this Claim For Damages below. If the signer is not the claimant, indicate the relationship of the signer to the claimant.

Michael F. Babitzke
(Signature)

10-2-2017
(Month/Day/Year)

(Social Security Number-Optional)

Attorney

(Relationship of signer, if not claimant)

DIRECTION: You may attach and include with this completed form any bills for medical treatment and expenses, and any estimates or bills for personal property damage. Questions may be referred to (209) 937-8807

NOTE: PRESENTATION OF A FALSE CLAIM IS A FELONY (Refer to California Penal Code Section 72)

[illegible]

1

CLAIM FOR DAMAGES

CITY OF STOCKTON

Note: Claims for bodily injury or death, damage to personal property, or damage to growing crops may be filed on this form, not later than six months after the occurrence out of which the claims arose. All other claims must be filed not later than one year after the occurrence out of which the claims arose. (Refer to California Government Code sections 910.4 and 911.2)

DIRECTION: The original claim must be filed with the City of Stockton City Clerk's Office, 425 North El Dorado Street, Stockton, California 95202. Retain the yellow copy for your records.

NAME OF CLAIMANT: JONES, ROBERT L. Date of Birth 11/6/1972
(Last) (First) (Middle)
HOME ADDRESS/PHONE: 1414 Mill Way Stockton, CA (209) 481-1343
(Number/Street) (City/State/Zip Code) (Phone Number)
BUSINESS ADDRESS/PHONE: 6 S. El Dorado St., Suite 305, Stockton, CA 95202 (209) 465-5722
(Number/Street) (City/State/Zip Code) (Phone Number)

DIRECTION: Indicate to which address you wish notice sent ☐ HOME ☒ BUSINESS
WHEN DID INJURY OR DAMAGE OCCUR? 4/4/2017 Tuesday 7:50 p.m.
(Month/Day/Year) (Day of Week) (Time of Day)
WHERE DID INJURY OR DAMAGE OCCUR? Hammer Lane and Alexandria Place, Stockton, California
(Street address, intersecting streets, or other location)

HOW DID INJURY OR DAMAGE OCCUR?
(Describe accident or occurrence in complete detail)

California Highway Patrol (CHP) conducted a high speed pursuit of a culprit that stole a purse from Costco in Lodi, California. CHP was notified to take corrective action and failed to take the corrective action which resulted in the high speed chase continuing to Stockton, California on city streets in the middle of the day and near a school zone. Claimant's wife, Skye Jones, was injured during the CHP's high speed pursuit of the culprit.

NAME OF CITY EMPLOYEE(S) INVOLVED? Employees unknown

WHAT ACTION OR INACTION OF CITY EMPLOYEE(S) CAUSED YOUR INJURY OR DAMAGES? Negligent high speed case.

WHAT INJURIES OR DAMAGES DID YOU SUFFER? Claimant suffers loss of consortium as a result of the injuries of his wife, Skye Jones

TOTAL AMOUNT CLAIMED: ☒ Unlimited case--over \$25,000.00 ☐ Limited case--\$25,000.00 or less

If under \$10,000.00, please specify amount \$

DIRECTION: Sign and date this Claim For Damages below. If the signer is not the claimant, indicate the relationship of the signer to the claimant.

Michael F. Babitzke 10-2-2017
(Signature) (Month/Day/Year) (Social Security Number-Optional)
Attorney
(Relationship of signer, if not claimant)

DIRECTION: You may attach and include with this completed form any bills for medical treatment and expenses, and any estimates or bills for personal property damage. Questions may be referred to (209) 937-8807

NOTE: PRESENTATION OF A FALSE CLAIM IS A FELONY (Refer to California Penal Code Section 72)

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PROOF OF SERVICE

I am a Citizen of the United States. I am over the age of eighteen years and not a party to the within action; my business address is 6 South El Dorado Street, Suite 305, Stockton, California.

I served the within, **CLAIM FOR DAMAGES, CITY OF STOCKTON** on the interested parties in this action, by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

City of Stockton
City Clerk's Office
425 North El Dorado Street
Stockton, CA 95202

☒ **BY MAIL** The envelope was mailed with postage thereon fully prepaid. I am "readily" familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

☐ **BY FACSIMILE:**

☐ **BY ELECTRONIC TRANSMISSION (E-MAIL)**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 2, 2017, at Stockton, California.

Zula Dorado
Zula Dorado

Received: _____ Date: _____

N. ALLEN SAWYER (SBN 173565)
LAW OFFICE OF ALLEN SAWYER
7488 Shoreline Dr Unit B1
Stockton, Ca 95219
Telephone (209) 406-2117
Facsimile (800) 968-0650
allen@allensawyer.com

FILED
SUPERIOR COURT - STOCKTON

2018 APR 25 AM 8:20 *je*

ROSA PINHEIRO, CLERK
BY *Danna Edwards*
DEPUTY

Attorney for Mr. Jones

THIS CASE HAS BEEN ASSIGNED TO
JUDGE ROGER ROSS IN
DEPARTMENT 11B FOR ALL PURPOSES,
INCLUDING TRIAL

#435-286653

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

CALVIN JONES,

Petitioner,

vs.

THE STOCKTON POLICE DEPARTMENT,
CITY OF STOCKTON,

Respondent.

Case No.:

STK-CV-*UWM* 2018-*4763*

VERIFIED PETITION FOR WRIT OF
MANDATE ORDERING COMPLIANCE
WITH THE CALIFORNIA PUBLIC
RECORDS ACT AND ARTICLE 1,
SECTION 3(b) OF THE CALIFORNIA
CONSTITUTION; COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

DATE:
TIME:
DEPT:

INTRODUCTION AND NOTICE

Notice is given that Petitioner Calvin Jones, through counsel, N. Allen Sawyer, moves for release of public records of documents, recordings, and physical evidence, through this Verified Petition for Writ of Mandate/Complaint and to command The Stockton Police Department, City of Stockton, to comply with the California Public Records Act ("CPRA"), Government Code §§ 6250, et seq., and California Constitution, Article 1, Section 3(b), and to declare that Respondents have failed to do so. By this Verified Petition/Complaint Petitioner alleges:

VERIFIED PETITION FOR WRIT OF MANDATE ORDERING COMPLIANCE WITH THE CALIFORNIA PUBLIC
RECORDS ACT AND ARTICLE 1, SECTION 3(b) OF THE CALIFORNIA CONSTITUTION; COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

1 This motion is made based on the attached memorandum of points and authorities,
2 declaration of Petitioner and Petitioner's Attorney N. Allen Sawyer, and attached exhibits.
3

4 5 6 **PARTIES**

8 Petitioner, Calvin Jones was charged with homicide CA Penal Code § 187 PC (A) and
9 unlawful killing of a human being, fetus, with malice aforethought in 1973. Specifically, Mr.
10 Jones was found guilty and already served his sentence.

11 Respondent Stockton Police Department ("SPD") is a public agency within the meaning of
12 Government Code § 6252(d).

13 The SPD is in possession of the records sought by this Petition.
14

15 **JURISDICTION AND VENUE**

16
17 This court has jurisdiction under Government Code § 6258, 6259, Code of Civil Procedure
18 §§ 1060, and 1085, and Article VI section 10 of the California Constitution.

19 Venue is proper in this Court: Because the SPD has an office located in the County of San
20 Joaquin. Also, the suit could be brought in San Joaquin County because the SPD resides in, and
21 the acts and omissions complained of herein occurred in the city of Stockton, San Joaquin County,
22 California. See Code Civ. Pro. §§ 393, 394(a).
23

24 //

25 //

26 //

27 VERIFIED PETITION FOR WRIT OF MANDATE ORDERING COMPLIANCE WITH THE CALIFORNIA PUBLIC
28 RECORDS ACT AND ARTICLE 1, SECTION 3(b) OF THE CALIFORNIA CONSTITUTION; COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

MEMORANDUM OF POINTS AND AUTHORITIES

Mr. Jones submits the following points and authorities, declaration, and exhibits in support of the motion to release public records of documents, recordings, and physical evidence.

STATEMENT OF THE CASE

An amended complaint was filed in 1973, charging petitioner with homicide **CA Penal Code § 187 PC (A)** an unlawful killing of a human being, fetus, with malice aforethought. Specifically, Mr. Jones was found guilty and already served his sentence. On August 8, 2017, Attorney N. Allen Sawyer wrote a letter to the Stockton Police Department requesting public records (Exhibit A). On September 21, 2017, the Stockton Police Department denied the request of the letter (Exhibit B). Mr. Jones was convicted of murder in 1983 and already served his time.

The following is a summary as to why the Stockton Police Department should disclose public record as the letter requested as of August 8, 2017:

(Exhibit A)

On August 8, 2017, counsel N. Allen Sawyer wrote a letter to the Stockton Police Department requesting under the **California Public Records Act §§6250**, an opportunity to inspect or obtain copies of public records that pertain to a homicide investigation in 1973 that was the basis of Calvin Jones conviction in 1983. Specially he was asking for all interviews, audio recordings, physical evidence in the possession of the Stockton Police Department.

(Exhibit B)

VERIFIED PETITION FOR WRIT OF MANDATE ORDERING COMPLIANCE WITH THE CALIFORNIA PUBLIC RECORDS ACT AND ARTICLE 1, SECTION 3(b) OF THE CALIFORNIA CONSTITUTION; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1 The letter responded to the request for public records dated August 8, 2017 which was
2 received by the Stockton Police Department on September 14, 2017. On September 21, 2017, the
3 Stockton Police Department advised of an extension to manually search for collect and
4 appropriately examine records. The extension carried out the response due date through October
5 8, 2017. The documents, recordings and physical evidence that were requested are located in a
6 criminal investigative file. As a result, the Stockton Police Department denied the request under
7 Government Code Section 6254(f). This Government Code section exempts any investigatory files
8 compiled by any local agency for law enforcement purposes from disclosure under the Public
9 Records Act.

11 DISCUSSION

13 Status of requestor.

14 "[A]ccess to information concerning the conduct of the people's business is a fundamental and
15 necessary right of every person in this state." Cal. Gov't Code § 6250. "Every person" can inspect
16 public records. Cal. Gov't Code § 6253(a). "Person" includes any natural person, corporation,
17 partnership, limited liability company, firm or association. Cal. Gov't Code § 6252(c). The CPRA
18 does not differentiate among those who seek access to public information. If a record is public, as
19 defined by or construed under the CPRA, all persons have the same right of access. *County of*
20 *Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1324, 89 Cal. Rptr. 3d 374 (2009); *State*
21 *Bd. of Equalization v. Superior Court*, 10 Cal. App. 4th 1177, 1190, 13 Cal. Rptr. 2d 342 (1992).
22 For example, citizens of other states, and foreign as well as domestic corporations are included in
23 the CPRA's definition of "person." *Connell v. Superior Court*, 56 Cal. App. 4th 601, 611-12, 65
24 Cal. Rptr. 2d 738 (1997). A municipal corporation, as well as its elected city attorney, is also a
25 "person" entitled to request documents from another governmental agency. *Los Angeles Unified*
26 *Sch. Dist. v. Superior Court*, 151 Cal. App. 4th 759, 771, 60 Cal. Rptr. 3d 445 (2007). Section

6252.5 of the Government Code expressly allows an elected member or official of any state or local agency to access public records of that agency — or any other — on the same basis as any other person. Cal. Gov't Code § 6252.5. Likewise, a plaintiff who files suit against a public agency may utilize the CPRA to obtain documents for use in litigation to the same extent as any other person. *County of Los Angeles v. Superior Court*, 82 Cal. App. 4th 819, 826, 98 Cal. Rptr. 2d 564 (2000). Members of the media, while "persons" under the CPRA, have no greater right of access than the general public. *Dixon v. Superior Court*, 170 Cal. App. 4th 1271, 1279, 88 Cal. Rptr. 3d 847 (2009); *City of San Jose v. Superior Court*, 74 Cal. App. 4th 1008, 1018, 88 Cal. Rptr. 2d 552 (1999); *City of Hemet v. Superior Court*, 37 Cal. App. 4th 1411, 1417 n.7, 44 Cal. Rptr. 2d 532 (1995). Conversely, a person personally affected by the public record has no greater right of access than other persons under the CPRA. *Los Angeles Police Dept. v. Superior Court*, 65 Cal. App. 3d 661, 668, 135 Cal. Rptr. 575 (1977).

I. UNDER CALIFORNIA GOVERNMENT CODE SECTION §6254(f), THE COURT MUST REVIEW THE FOLLOWING FACTORS IN RELEASING POLICE RECORDS:

- A. The denial of Mr. Jones CPRA was overbroad for the government's interest. State and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any parties involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses. However, state and local law enforcement agencies cannot disclose confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of a crime. However, state and local law enforcement can redact anything

1 that is restricted under this code section. In addition, this investigation was over 35 years
2 ago and raises the question if the records in this case require redaction.
3
4

5 II. RULES FOR ACTIVE INVESTIGATIONS. 6

7 Specified facts from investigatory or security records, without disclosure of the records
8 themselves, must be disclosed unless disclosure would endanger the successful completion of
9 an investigation, or related investigation, or endanger a person involved in the investigation.
10 Cal. Gov't Code §§ 6254(f)(1), (f)(2) and (f)(3).
11

12 For arrests, the agency must disclose such facts as the name, occupation, and detailed physical
13 description of every individual arrested by the agency, as well as the time and date of arrest,
14 the time and date of booking, the location of the arrest, the factual circumstances surrounding
15 the arrest, the amount of bail set, the time and manner of release or the location where the
16 individual is currently being held, and all charges the individual is being held upon, including
17 any outstanding warrants from other jurisdictions and parole or probation holds must be
18 disclosed. Cal. Gov't Code § 6254(f)(1).
19

20 For complaints or requests for assistance, the agency must disclose such facts as the time and
21 nature of the response, the time, date and location of occurrence, the time and date of the report,
22 the name and age of the victim, the factual circumstances surrounding the crime or incident,
23 and a general description of any injuries, property, or weapons involved. Notwithstanding these
24 mandatory disclosure requirements, an agency, at the victim's request, may withhold the name
25 of a victim of certain specified sexual crimes as set forth in the statute. Cal. Gov't Code §
26 6254(f)(2). Additionally, to obtain address information for individuals arrested by an agency
27

1 or victims of crimes other than those expressly set forth in the statute, the requester must state
2 under penalty of perjury that the information is sought for one of five specified purposes:
3 scholarly, journalistic, political, governmental, or investigation purposes by a licensed private
4 investigator. Cal. Gov't Code § 6254(f)(3). Moreover, the requester must declare under penalty
5 of perjury that the information obtained shall not be used, directly or indirectly, to sell a product
6 or service. *Id.*

7 The mandatory disclosure provisions of Section 6254(f)(1) and (f)(2) have been held to apply
8 only to those records pertaining to contemporaneous police activity and not to requests for
9 arrest information about closed investigations. *County of Los Angeles v. Superior*
10 *Court* (Kusar), 18 Cal. App. 4th 588, 598-99, 22 Cal. Rptr. 2d 409 (1993). This holding arose
11 from an unusual factual setting in which a litigant made a Public Records Act request going
12 back ten years to circumvent a prior discovery order and to obtain confidential police officer
13 personnel information. *Id.*

14 The broad exemptions of 6254(f) are discretionary, however, and nothing precludes an agency
15 from disclosing more than it is required to under the law. Cal. Gov't Code § 6253(e).

16 17 **III. RULES FOR CLOSED INVESTIGATIONS.**

18
19 The CPRA's exemption for investigatory files does not terminate when the investigation
20 terminates. *Williams v. Superior Court*, 5 Cal. 4th 337, 362, 852 P.2d 377, 19 Cal. Rptr.2d 882
21 (1993). In *Williams*, the California Supreme Court held that the language and history of Section
22 6254(f) did not support an interpretation that would place a time limit on the duration of the
23 exemption to disclosure regarding investigatory files. Additionally, the exemption has been
24 held to apply to letters prepared after the conclusion of an investigation but that were related
25 exclusively to the investigation. *Rackauckas v. Superior Court*, 104 Cal. App. 4th 169, 179,
26 128 Cal. Rptr. 2d 234 (2002).

1 The mandatory disclosure requirements of information from investigatory record, set forth
2 above, have been held to apply only to those records pertaining to contemporaneous police
3 activity, not to closed investigations. *County of Los Angeles v. Superior Court (Kusar)*, 18 Cal.
4 App. 4th 588, 598-99, 22 Cal. Rptr. 2d 409 (1993),
5

6 IV. PURPOSE OF REQUEST.

7
8 There are no limitations on access to public records based on the purpose for which the record
9 is being requested, if the record is otherwise subject to disclosure. Cal. Gov't Code § 6257.5.
10 A member of the public need not state the purpose for requesting records. *See, e.g., CBS Broad.*
11 *Inc. v. Superior Court*, 91 Cal. App. 4th 892, 909, 110 Cal. Rptr. 2d 889 (2001); *City of San*
12 *Jose v. Superior Court*, 74 Cal. App. 4th 1008, 1018, 88 Cal. Rptr. 2d 552 (1999); *State Bd. of*
13 *Equalization v. Superior Court*, 10 Cal. App. 4th 1177, 1191, 13 Cal. Rptr. 2d 342 (1992). This
14 is so because "[t]he motive of the particular requester is irrelevant; the question instead is
15 whether disclosure serves the public interest." *County of Santa Clara v. Superior Court*, 170
16 Cal. App. 4th 1301, 1324, 89 Cal. Rptr. 3d 374 (2009) (rejecting county's standing argument
17 that open government group had no particularized interest in GIS basemap data other than
18 "generalized proclamation of the 'public's right to know'..."). Stated another way, what is
19 material is the public interest in disclosure, not the private interest of a requesting party. *State*
20 *Bd. of Equalization*, 10 Cal. App. 4th at 1191.
21

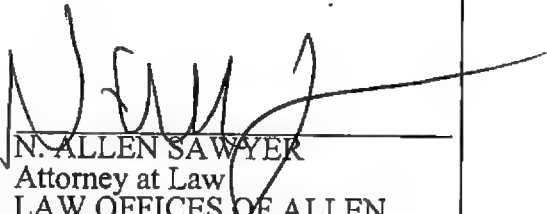
22 CONCLUSION

23
24 For the reasons presented herein, it is respectfully requested that the court exercise its
25 discretion and order the release of public records Petitioner requested from the Stockton Police
26 Department.

1
2 WHEREFORE, Petitioner prays as follows:

- 3 1. That the Court issue a writ of peremptory writ of mandate directing Respondent SPD to
4 provide Petitioner Calvin Jones with all admittedly disclosable records, meaning those records that
5 the SPD agrees must be disclosed under the CPRA, immediately and without further delay;
- 6 2. To the extent there are exceptional circumstances that make it unreasonable for the SPD to
7 provide any admittedly disclosable records immediately, that the Court issue a peremptory writ of
8 mandate directing Respondent SPD to provide Petitioner Calvin Jones with an estimated date that
9 those records will be available;
- 10 3. That the Court issue a peremptory writ of mandate directing Respondent SPD to provide
11 Petitioner Calvin Jones and the Court with a list of any responsive records that it has not released
12 to petitioners, with an explanation of why each such record is not subject to release;
- 13 4. That the Court issue a writ of mandate directing Respondent SPD to provide Petitioner
14 Calvin Jones with all remaining requested records except those records that the Court determines
15 may lawfully be withheld, or an order to show cause why it should not do so.

16
17
18 Dated this Monday, April 23, 2018

19
20
21 
22 N. ALLEN SAWYER
23 Attorney at Law
24 LAW OFFICES OF ALLEN
25 SAWYER
26

27 VERIFIED PETITION FOR WRIT OF MANDATE ORDERING COMPLIANCE WITH THE CALIFORNIA PUBLIC
28 RECORDS ACT AND ARTICLE 1, SECTION 3(b) OF THE CALIFORNIA CONSTITUTION; COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

CALVIN JONES VERIFICATION

I, Calvin Jones, hereby declare as follows:

I am petitioner in this matter. I have read the VERIFIED PETITION FOR WRIT OF MANDATE ORDERING COMPLIANCE WITH THE CALIFORNIA PUBLIC RECORDS ACT AND ARTICLE 1, SECTION 3(b) OF THE CALIFORNIA CONSTITUTION; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know its contents. The facts alleged in this matter concerning my claims are within my own personal knowledge, and I know these facts to be true, except for matters stated on information and belief, and I believe them to be true. The information obtained shall not be used, directly or indirectly, to sell a product or service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and this verification was executed this 24 day of 24, 2018 in Stockton, California.

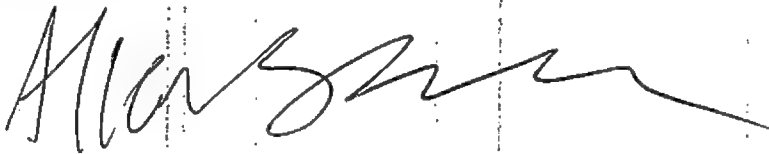
Calvin Jones

1
2
3 **N. ALLEN SAWYER VERIFICATION**
4

5 I, N. Allen Sawyer, hereby declare as follows:

6 I am the attorney for petitioner in this matter. I have read paragraphs VERIFIED PETITION
7 FOR WRIT OF MANDATE ORDERING COMPLIANCE WITH THE CALIFORNIA PUBLIC
8 RECORDS ACT AND ARTICLE 1, SECTION 3(b) OF THE CALIFORNIA
9 CONSTITUTION; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and
10 know its contents. The facts alleged in this matter concerning my claims are within my own
11 personal knowledge, and I know these facts to be true, except for matters stated on information
12 and belief, and I believe them to be true.

13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct and this verification was executed this 4 day of 24, 2018
15 in Suckun, California.

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27 VERIFIED PETITION FOR WRIT OF MANDATE ORDERING COMPLIANCE WITH THE CALIFORNIA PUBLIC
28 RECORDS ACT AND ARTICLE 1, SECTION 3(b) OF THE CALIFORNIA CONSTITUTION; COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

1 Walter H. Walker, III (SB #63117)
2 Peter J. Koenig (SB #132437)
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FILED
18 APR 25 PM 3:59
ROSA JUNQUEIRO, CLERK
BY JOYCE BANEK
DEPUTY

6 Attorneys for Plaintiffs FILIBERTO VALENCIA, SR.
7 and GRISELDA VALENCIA, individually and as
8 successors in interest to FILIBERTO VALENCIA, JR.

THIS CASE HAS BEEN ASSIGNED TO
JUDGE ELIZABETH HUMPHREYS IN
DEPARTMENT 10C FOR ALL PURPOSES,
INCLUDING TRIAL

9 IN THE SUPERIOR COURT IN THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF SAN JOAQUIN

12 FILIBERTO VALENCIA, SR., and
13 GRISELDA VALENCIA, individually and as
14 successors in interest to FILIBERTO
15 VALENCIA, JR.

16 Plaintiffs,

17 v.

18 CITY OF STOCKTON, SERGEANT DANA
19 MOSHER, OFFICER KYLE AMANT,
20 OFFICER JASON DIGIULIO, and DOES 1-50,
21 inclusive,

22 Defendants.

Case No. STR-CV-VPI -2018-4830

COMPLAINT FOR DAMAGES:
DEMAND FOR JURY TRIAL;
DECLARATION OF FILIBERTO
VALENCIA, SR.; DECLARATION OF
GRISELDA VALENCIA

1. Wrongful Death - Negligence;
2. Violation of Bane Act (Cal. Civ. Code § 52.1);
3. Assault;
4. Battery;
5. Intentional Infliction of Emotional Distress;

23 Plaintiffs FILIBERTO VALENCIA, SR., and GRISELDA VALENCIA, individually and
24 as successors in interest to FILIBERTO VALENCIA, JR., complain against the above-named
25 defendants, and each of them, as follows:

26 **INTRODUCTION**

- 27 1. This is a wrongful death/survivor action for money damages arising from the death

28 COMPLAINT FOR DAMAGES: DEMAND FOR JURY TRIAL; DECLARATION OF FILIBERTO VALENCIA, SR.;
DECLARATION OF GRISELDA VALENCIA

1 of decedent Filiberto Valencia, Jr., on January 19, 2016, in Stockton, California, against all
2 defendants for violations of California tort law. Filiberto was 26 years old at the time of his death,
3 unmarried and without issue.

4
5 **JURISDICTION AND VENUE**

6 2. The subject death and injuries alleged herein occurred in the County of San
7 Joaquin, State of California, and thus venue in this Court is proper.

8
9 **PARTIES**

10 3. Plaintiffs are the natural parents, heirs, successors in interest and survivors of
11 decedent. Filed herewith are their declarations required by California Code of Civil Procedure §
12 377.32. They are persons described in California Code of Civil Procedure § 377.60(a) as persons
13 who may bring a wrongful death action and would be entitled to the property of the decedent by
14 intestate succession. In their own right, they bring their Claims for Wrongful Death and
15 Survivorship and violation of the Bane Act (Cal. Civ. Code §52.1).

16 4. Defendant City of Stockton was and is a public entity duly organized and existing
17 under the laws of the State of California. Defendant City of Stockton operates, manages, directs,
18 controls, supervises and employs members of the Fresno Police Department and DOES 1-40.
19 Defendant City of Stockton is liable for its actions alleged herein pursuant to California
20 Government Code section 815, and for the actions of its employees acting within the scope of their
21 employment pursuant to California Government Code section 815.2, among other statutes.

22 5. At all times mentioned herein, defendant Sergeant Dana Mosher, defendant Officer
23 Kyle Amant, defendant Officer Jason DiGiulio and DOES 1-25 were employed as peace officers
24 by the City of Stockton Police Department, and each is sued individually in his or her capacity as a
25 peace officer. By engaging in the conduct described herein, each of these defendants exceeded the
26 authority vested in him or her as peace officers as employees of the City of Stockton and its Police
27 Department.

1 §910, et seq., which claim was rejected when it expired without timely action by the applicable
2 government defendants.

3 14. Plaintiffs filed a timely suit against all defendants named or described herein,
4 which suit was pending in the United States District Court for the Eastern District of California as
5 Case No. 2:16 CV02081-JAM-AC until April 16, 2018, when that Court issued a Minute Order
6 stating:

7 The Court requested, and the parties submitted, additional briefing
8 as to whether Plaintiffs would be prevented from pursuing their
9 claims in state court should this Court order dismissal. The parties
10 agree that dismissal would not prejudice Plaintiffs' ability to refile
11 in state court. After reviewing the authority and evidence cited by
12 the parties the Court finds that plaintiffs will be able to refile their
13 claims in State Court. See 28 U.S.C. §1367(d); *Addison v. State of*
14 *California*, 21 Cal 3d 313 (1978). Pursuant to 28 U.S.C. §1367(c),
15 the Court declines to exercise supplemental jurisdiction over
16 plaintiffs' remaining claims and DISMISSES those claims without
17 prejudice.

18
19 A copy of the District Court's Minute Order is attached to the Complaint.

20
21 **FIRST CLAIM**

22 **(Wrongful Death-Negligence - Against Defendants City of Stockton, Sergeant Moser,**
23 **Officers Amant and DiGiulio, and Does 1-50)**

24 15. Plaintiffs refer to each and every paragraph of this complaint and incorporate said
25 allegations by reference as though the same were herein fully set forth.

26 16. On or about January 19, 2016, decedent Filiberto Valencia, Jr., while undergoing a
27 paranoid episode as a result of an aberrant mental condition, was accosted by various law

1 enforcement officers including, but not limited to, Stockton Police personnel Mosher, Amant, and
2 DiGiulio.

3 17. Upon encountering Filiberto Valencia, Jr., on his knees or sitting on the floor,
4 DiGiulio ordered him to put his hands over his head, which he did. Thereafter, DiGiulio smashed
5 his head into a bathroom wall; hit him over the head twice with the butt of his pistol, thereby
6 fracturing his skull and causing hemorrhages of his brain; beat him with closed fists; and lay on
7 top of him until he asphyxiated, ceased breathing, and died; during the approximate six minutes
8 that this took place, Amant speared Filiberto Valencia, Jr., with a baton in the stomach, causing a
9 three-inch tear in his liver, and hit him across the shins as hard as he could with the baton, and
10 Mosher Tased him four times in just over 30 seconds.

11 18. The San Joaquin County Medical Examiner, Dr. Bennet Omalu, found Filiberto
12 Valencia, Jr., to have been the victim of homicide in which death was caused by blunt force
13 trauma to the head, neck and torso.

14 19. The actions of Stockton Police Officers were conducted by or under the supervision
15 of defendant Sergeant Mosher

16 20. The attack on Filiberto Valencia, Jr., and the Tasing, beating and other acts
17 perpetrated by Stockton Police on Filiberto Valencia, Jr., were without cause and with
18 unreasonable and excessive force and were conducted intentionally or with deliberate indifference
19 to his safety, health, and life.

20 21. By deliberately and intentionally Tasing, spearing, beating, and smothering
21 decedent Filiberto Valencia, Jr., defendants Mosher, Amant, and DiGiulio and DOES 1-8 intended
22 to and did cause serious injury and death to Filiberto Valencia, Jr. Such actions were in conscious
23 and reckless disregard of the risk of injury and death and under the circumstances there was no
24 objectively reasonable basis for the defendants' actions in Tasing, beating, spearing, smothering
25 and ultimately killing decedent Filiberto Valencia, Jr.

26 22. Reasonable alternatives were available to defendants other than to beat, Taser,
27 spear, and smother Filiberto Valencia, Jr. The death of Filiberto Valencia, Jr., was the proximate

1 and legal result of hitting, spearing, smashing, beating and smothering him without having taken
2 proper and procedural steps to ascertain he was suffering from mental illness.

3 23. Defendants herein and other officers employed by or acting on behalf of other
4 defendants concealed and falsified material information and otherwise attempted to cover up their
5 misconduct, including but not limited to turning off or not activating their body cameras in
6 violation of Stockton Police Department General Orders.

7 24. Defendants City of Stockton and DOES 10-20, and each of them, are vicariously
8 responsible and liable for the conduct of the employees that occurred within the course and scope
9 of their employment and duties, and pursuant to California Government Code § 815.2, *et seq.*

10 25. Prior to the death of decedent Filiberto Valencia, Jr., plaintiffs Filiberto, Sr., and
11 Griselda Valencia lived with decedent and were dependent on him for love, comfort,
12 companionship, familial relationship, support and maintenance. At all times prior to his death,
13 decedent was a loving, faithful, dutiful son to plaintiffs.

14 26. As a direct and proximate result of the acts and omissions of defendants as set forth
15 above, including the gross negligence, carelessness, and deliberate indifference to decedent's
16 safety and rights, and the wrongful death of Filiberto Valencia, Jr., plaintiffs have sustained
17 compensable loss resulting from the loss of his care, comfort, society, attention, services,
18 affection, familial relationship, companionship, love, and support as provided in section 377.61 of
19 the California Code of Civil Procedure, all in an amount not yet determined, but within the general
20 jurisdictional requisites of this Court, and to be proven at trial.

21 27. As a further direct and proximate result of the actions and omissions described
22 above, plaintiffs have incurred expenses, including but not limited to funeral and burial expenses,
23 the amount of which will be proven at trial.

24 28. As a further direct and proximate result of the actions and omissions described
25 above, Filiberto Valencia, Jr., suffered damage before he died. As successors in interest to the
26 decedent, plaintiffs are entitled to recover all punitive or exemplary damages that the decedent
27 would have been entitled to recover had he lived, as provided in section 377.34 of the California

1 Code of Civil Procedure.

2 29. At all relevant times herein, the actions and omissions of defendants and each of
3 them, as set forth above, were conducted or occurred deliberately, intentionally, knowingly,
4 maliciously, willfully, wantonly, and with conscious and reckless disregard for the rights and
5 safety of decedent Filiberto Valencia, Jr., entitling the plaintiffs to an award of exemplary
6 damages and as successors in interest to the decedent as provided by section 377.34 of the
7 California Code of Civil Procedure.

8 WHEREFORE, plaintiffs pray for judgment as set forth below.
9

10 **SECOND CLAIM**

11 **(Violation of Bane Act, Cal. Civ. Code § 52.1, against all Defendants)**

12 30. Plaintiffs refer to each and every paragraph of this complaint and incorporate said
13 allegations by reference as though the same were herein fully set forth.

14 31. The Bane Act, California Civil Code section 52.1, allows anyone whose
15 constitutional or statutory rights have been interfered with by threats, intimidation, or coercion to
16 bring suit. A plaintiff bringing suit pursuant to the Bane Act need not allege that the defendants
17 acted with discriminatory intent, so long as the defendants' acts were accompanied by the requisite
18 threats, intimidation, or coercion. Where there has been an unlawful arrest and excessive force is
19 applied in making the arrest, there has been coercion sufficient to constitute a violation of the
20 Bane Act.

21 32. The attack on Filiberto Valencia, Jr., and the Tasing, beating, spearing,
22 smothering, and other acts perpetrated by Stockton Police on Filiberto Valencia, Jr., were without
23 cause and with unreasonable and excessive force and deliberate indifference to his safety, health,
24 and life. As such, they were an unreasonable seizure in violation of decedent's rights secured by
25 the Fourth Amendment of the United States Constitution and Article I, Section 13 of the
26 California Constitution, among other statutes and constitutional provisions.

27 33. Through the conduct alleged herein, Defendants, and each of them, interfered or
28

1 attempted to interfere, through threats, intimidation, and/or coercion, with decedent's rights
2 secured under state and federal laws and under the state and federal Constitutions, including but
3 not limited to decedent's rights secured by the Fourth Amendment of the United States
4 Constitution and Article I, Section 13 of the California Constitution.

5 34. As a direct and proximate result of the conduct by defendants alleged above, and
6 the wrongful death of decedent Filiberto Valencia, Jr., plaintiffs have sustained pecuniary loss
7 resulting from the loss of care, comfort, society, attention, services, affection, familial relationship,
8 companionship and love from decedent, all in an amount not yet determined, but within the
9 general jurisdictional requisites of this Court, and to be proven at trial.

10 35. As a further direct and proximate result of defendants' conduct, plaintiffs have
11 incurred incidental expenses, including but not limited to funeral and burial expenses, the amount
12 of which will be proven at time of trial.

13 36. The conduct alleged herein entitles Plaintiffs to recover actual damages, civil
14 penalties, attorneys' fees and costs, and other allowable damages pursuant to the provisions of the
15 Bane Act.

16 37. At all relevant times, the actions and omissions of defendants, and each of them, as
17 set forth above, were made deliberately, intentionally, maliciously, willfully, wantonly and with
18 conscious disregard for the rights of plaintiffs, thereby entitling plaintiffs to an award of
19 exemplary damages.

20 WHEREFORE, plaintiffs pray for judgment as set forth below.

21

22

THIRD CLAIM

23

(Assault against all Defendants)

24

25 38. Plaintiffs refer to each and every paragraph of this complaint and incorporate said
26 allegations by reference as though the same were herein fully set forth.

26

27 39. Through the conduct alleged herein, defendants, and each of them, intended to
28 cause harmful and/or offensive contact with decedent, and decedent reasonably believed he was

28

1 about to be touched in a harmful and/or offensive manner.

2 40. Through the conduct alleged herein, defendants, and each of them, threatened to
3 touch decedent in a harmful and/or offensive manner and it reasonably appeared to decedent that
4 they were about to carry out that threat. Decedent did not consent to this conduct.

5 41. As a direct and proximate result of the conduct by defendants alleged above, and
6 the wrongful death of decedent Filiberto Valencia, Jr., plaintiffs have sustained pecuniary loss
7 resulting from the loss of care, comfort, society, attention, services, affection, familial relationship,
8 companionship and love from decedent, all in an amount not yet determined, but within the
9 general jurisdictional requisites of this Court, and to be proven at trial.

10 42. As a further direct and proximate result of defendants' conduct, plaintiffs have
11 incurred incidental expenses, including but not limited to funeral and burial expenses, the amount
12 of which will be proven at time of trial.

13 43. At all relevant times, the actions and omissions of defendants, and each of them, as
14 set forth above, were made deliberately, intentionally, maliciously, willfully, wantonly and with
15 conscious disregard for the rights of plaintiffs, thereby entitling plaintiffs to an award of
16 exemplary damages.

17 WHEREFORE, plaintiffs pray for judgment as set forth below.

18
19 **FOURTH CLAIM**

20 **(Battery against all Defendants)**

21 44. Plaintiffs refer to each and every paragraph of this complaint and incorporate said
22 allegations by reference as though the same were herein fully set forth.

23 45. Through the conduct alleged herein, defendants, and each of them, caused decedent
24 to be touched with the intent to harm and offend decedent, and decedent did not consent to this
25 touching.

26 46. As a direct and proximate result of the conduct by defendants alleged above, and
27 the wrongful death of decedent Filiberto Valencia, Jr., plaintiffs have sustained pecuniary loss

1 resulting from the loss of care, comfort, society, attention, services, affection, familial relationship,
2 companionship and love from decedent, all in an amount not yet determined, but within the
3 general jurisdictional requisites of this Court, and to be proven at trial.

4 47. As a further direct and proximate result of defendants' conduct, plaintiffs have
5 incurred incidental expenses, including but not limited to funeral and burial expenses, the amount
6 of which will be proven at time of trial.

7 48. At all relevant times, the actions and omissions of defendants, and each of them, as
8 set forth above, were made deliberately, intentionally, maliciously, willfully, wantonly and with
9 conscious disregard for the rights of plaintiffs, thereby entitling plaintiffs to an award of
10 exemplary damages.

11 WHEREFORE, plaintiffs pray for judgment as set forth below.

12

13

FIFTH CLAIM

14 **(Intentional Infliction of Emotional Distress, against Sergeant Mosher, Officers Amant and**
15 **DiGiulio, and DOES 1-15)**

16 49. Plaintiffs refer to each and every paragraph of this complaint and incorporate said
17 allegations by reference as though the same were herein fully set forth.

18 50. The conduct of defendants DiGiulio, Mosher, Amant and DOES 1-15 in beating
19 Filiberto Valencia, Jr., with gun, fists and baton, spearing him with a baton, smashing his head
20 into a wall, smothering him and Taserling him was outrageous in concept and execution.

21 51. The conduct of said defendants was outrageous and intentionally caused, or was
22 performed with reckless disregard for the probability of causing, emotional distress to Filiberto
23 Valencia, Jr.

24 52. Before his death, Filiberto Valencia, Jr., suffered severe or extreme emotional
25 distress as a direct and proximate result of the outrageous conduct of said defendants.

26 53. The conduct herein alleged was malicious and oppressive, entitling plaintiffs, as
27 successors in interest to Filiberto Valencia, Jr., to an award of exemplary damages.

28

1 WHEREFORE, plaintiffs pray for judgment against defendants DiGiulio, Mosher, Amant
2 and DOES 1-15, and each of them, as set forth below.

3 **PRAYER FOR RELIEF**

4 Plaintiffs pray for judgment against defendants, and each of them, as follows:

- 5 1. For compensatory damages in a sum to be determined at the time of trial;
- 6 2. For general damages in a sum to be determined at the time of trial;
- 7 3. For treble damage as provided by law, including but not limited to California Civil
8 Code § 52;
- 9 4. For punitive damages in an amount appropriate to punish or make an example of
10 the individually named police officers, in an amount according to proof;
- 11 5. For civil penalties as provided by law, including but not limited to California Civil
12 Code § 52;
- 13 6. For prejudgment interest;
- 14 7. For attorneys' fees as provided by law, including but not limited to California Civil
15 Code § 52;
- 16 8. For costs of suit incurred herein; and
- 17 9. For such other and further relief as the Court may deem just and proper.

18 DATED: April 24, 2018

19 WALKER, HAMILTON, KOENIG & BURBIDGE,
20 LLP

21 By: 

22 Walter H. Walker, III
23 Attorney for Plaintiffs FILIBERTO
24 VALENCIA, SR. and GRISELDA
25 VALENCIA, individually and as
26 successors in interest to FILIBERTO
27 VALENCIA, JR.
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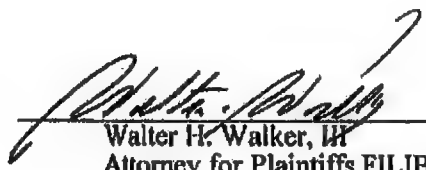
DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues herein alleged.

DATED: April 24, 2018

WALKER, HAMILTON, KOENIG & BURBIDGE,
LLP

By: _____



Walter H. Walker, III
Attorney for Plaintiffs FILIBERTO
VALENCIA, SR. and GRISELDA
VALENCIA, individually and as
successors in interest to FILIBERTO
VALENCIA, JR.

Skip Walker

From: caed_cmecf_helpdesk@caed.uscourts.gov
Sent: Monday, April 16, 2018 1:23 PM
To: CourtMail@caed.uscourts.dcn
Subject: Activity in Case 2:16-cv-02081-JAM-AC Valencia et al v City of Stockton et al Minute Order.

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

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U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was entered on 4/16/2018 at 1:23 PM PDT and filed on 4/16/2018

Case Name: Valencia et al v City of Stockton et al

Case Number: 2:16-cv-02081-JAM-AC

Filer:

Document Number: 32(No document attached)

Docket Text:

MINUTE ORDER: On April 10, 2018, the Court granted Defendants motion for summary judgment on Plaintiffs federal claims. ECF No. 28. The only claims remaining in this action are state law claims. The Court may therefore decline to exercise supplemental jurisdiction over this action and dismiss the remaining claims. 28 U.S.C. § 1367. The Court requested, and the parties submitted, additional briefing as to whether Plaintiffs would be prevented from pursuing their claims in state court should this Court order dismissal. The parties agree that dismissal would not prejudice Plaintiffs ability to refile in state court. ECF Nos. 30, 31. After reviewing the authority and evidence cited by the parties, the Court finds that Plaintiffs will be able to refile their claims in state court. See 28 U.S.C § 1367(d); Addison v. State of California, 21 Cal.3d 313 (1978). Pursuant to 28 U.S.C. § 1367(c), the Court declines to exercise supplemental jurisdiction over Plaintiffs remaining claims and **DISMISSES** those claims, without prejudice. (TEXT ENTRY ONLY) (Vine, H)

2:16-cv-02081-JAM-AC Notice has been electronically mailed to:

Beau Richard Burbidge beau@whk-law.com

Dana A. Suntag dsuntag@herumcrabtree.com, adutra@herumcrabtree.com, jsanchez@herumcrabtree.com

DECLARATION OF FILIBERTO VALENCIA, SR.
AS FILIBERTO C. VALENCIA'S BENEFICIARY AND SUCCESSOR IN INTEREST

I, FILIBERTO VALENCIA, SR., declare:

1. I am the father of decedent Filiberto C. Valencia ("Decedent") who died on January 19, 2016, in Stockton, California. I am currently married to Griselda Valencia, Decedent's mother.

2. No proceeding has been, is now being, or will be conducted in California or any other state for administration of Decedent's estate.

3. Decedent died intestate. Decedent never married and never had a domestic partner. Decedent had no children, stepchildren, or other issue. Decedent was living with me in my residence at the time of his death.

4. I am Decedent's beneficiary as defined in Probate Code section 24. I am therefore entitled to Decedent's patient records pursuant to Health and Safety Code section 123105(e)(4).

5. As Decedent's father, I am Decedent's heir and Decedent's estate passes to me and my wife equally pursuant to Probate Code section 6402(b). I am also a beneficiary of Decedent's estate pursuant to Code of Civil Procedure section 377.10. I am also Decedent's successor in interest pursuant to Code of Civil Procedure section 377.11, and I, along with my wife, succeed to Decedent's interest in any action or proceeding.

6. No other person has a superior right to commence any action at law or to be substituted for Decedent in any pending action at law.

7. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: March 6, 2016

By: Filiberto Valencia
FILIBERTO VALENCIA, SR.

DECLARATION OF FILIBERTO VALENCIA, SR
AS FILIBERTO C. VALENCIA'S BENEFICIARY AND SUCCESSOR IN INTEREST

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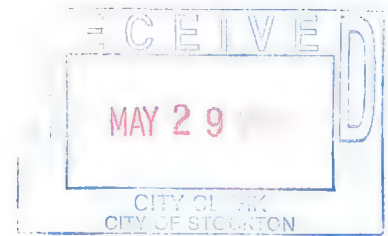
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

DANIEL HERNANDEZ,

Plaintiff,

v.

CITY OF STOCKTON; CITY OF
STOCKTON POLICE DEPARTMENT;
LUIS NAVARRO, in his individual
capacity as a Stockton Police Officer;
MATTHEW WRIGHT, in his individual
capacity as a Stockton Police Officer;
MATTHEW HUFF, in his individual
capacity as a Stockton Police Officer;
SERGEANT RICHARD BUCKLEY,
in his individual capacity as a Stockton
Police Officer; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 2:18-CV-01316-JAM-EFB

COMPLAINT FOR DAMAGES FOR
VIOLATIONS OF CIVIL AND
CONSTITUTIONAL RIGHTS

DEMAND FOR JURY TRIAL

INTRODUCTION

On July 8, 2017, as part of a welfare check by City of Stockton police officers, DANIEL HERNANDEZ ("HERNANDEZ"), a now 28 years old male, sustained severe burns to his right ear, anterior trunk and right thigh. These injuries were caused when City of Stockton police officers pinned HERNANDEZ, whose hands were already handcuffed behind his back, face down to scorching hot concrete. HERNANDEZ required 3 weeks of in-patient care at U.C. Davis Medical Center. HERNANDEZ brings this action for damages under the 1964 Civil Rights Act (42 U.S.C § 1983) for violation of rights guaranteed by the Fourth and Fourteenth Amendments to the United States

1 Constitution, and applicable provisions of the California State Constitution and statutes.

2 **JURISDICTION AND VENUE**

3 1. This Court has original subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C.
4 § 1331 because it is a civil suit arising under the Constitution and laws of the United States. This Court has
5 supplemental jurisdiction over the pendant state law claims pursuant to 28 U.S.C. § 1367(a) because they
6 are part of the same controversy between the parties.

7 2. Venue is proper in the United States District court for the Eastern District of California under
8 28 U.S.C. § 1391(b) because the Defendants are located in this District, and because the acts and/or
9 omissions set forth in this Complaint occurred in this District. Venue is proper in the Sacramento Division
10 of this District pursuant to Local Rule 120(d) because the claims at issue arise out of acts and/or omissions
11 that occurred in San Joaquin County.

12 **PARTIES**

13 3. Plaintiff, DANIEL HERNANDEZ (HERNANDEZ) is a 28 year old male Stockton resident.
14 At the time of the events set forth herein HERNANDEZ lived with his Mother in Stockton, California.

15 4. Defendant, CITY OF STOCKTON ("CITY OF STOCKTON") is a public entity in the
16 County of San Joaquin, State of California. CITY OF STOCKTON is subject to suit pursuant to California
17 Government Code § 945.

18 5. Defendant STOCKTON POLICE DEPARTMENT ("SPD") is a department of CITY OF
19 STOCKTON. SPD is a public entity subject to suit pursuant to California Government Code § 945.

20 6. Defendant, LUIS NAVARRO ("NAVARRO") at all times relevant to this Complaint was a
21 police officer for the SPD, employed by CITY OF STOCKTON. Defendant NAVARRO is sued in his
22 individual capacity.

23 7. Defendant, MATTHEW WRIGHT ("WRIGHT") at all times relevant to this Complaint was
24 a police officer for the SPD, employed by CITY OF STOCKTON. Defendant WRIGHT is sued in his
25 individual capacity.

26 8. Defendant, MATTHEW HUFF ("HUFF") at all times relevant to this Complaint was a police
27 officer for the SPD, employed by CITY OF STOCKTON. Defendant HUFF is sued in his individual
28 capacity.

1 9. Defendant, SERGEANT RICHARD BUCKLEY ("BUCKLEY") at all times relevant to this
2 Complaint was a police officer for the SPD, employed by CITY OF STOCKTON. Defendant BUCKLEY
3 is sued in his individual capacity.

4 10. HERNANDEZ is not aware of the true names and capacities of the Defendants sued herein
5 as DOES 1 through 100, whether individual, corporate, associate, or otherwise, and therefore sues such
6 defendants by these fictitious names. HERNANDEZ, will amend this Complaint to allege their true names
7 and capacities when ascertained. HERNANDEZ is informed and believes, and on that basis alleges, that
8 each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged
9 and that HERNANDEZ's injuries and damages herein alleged were legally caused by such Defendants.
10 Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or
11 employment, with the knowledge and/or consent of said co-defendant.

12 FACTUAL ALLEGATIONS

13 11. At all times relevant herein, all wrongful acts and/or omissions by the Defendants were
14 performed under color of state law and/or in concert with or on behalf of those acting under the color of
15 state law.

16 12. At the time of the events described HERNANDEZ was 27 years old and living with his
17 mother. On or about July 8, 2017, HERNANDEZ's mother called City of Stockton police because her
18 son was acting strange.

19 13. Defendants NAVARRO and WRIGHT arrived on-scene they found HERNANDEZ
20 in the backyard with tape around his head which covered his eyes. HERNANDEZ also had paper in his
21 mouth and was dressed only in a towel which was around his waist. HERNANDEZ was clearly having
22 a mental break and was not making sense when speaking.

23 14. Defendants NAVARRO and WRIGHT immediately placed handcuffs on HERNANDEZ
24 restraining his hands behind his back and brought him to the shade to avoid burning his feet. Once hand
25 cuffed HERNANDEZ did not pose a threat to any officers or the public. Within two minutes of being
26 handcuffed and placed in the shade NAVARRO told HERNANDEZ that they (NAVARRO and
27 WRIGHT) were going to "Wrap him up": meaning they were going place a restraint system on him called
28 the "Wrap."

1 15. Defendant NAVARRO and/or WRIGHT "called" for a wrap which apparently was not
2 present nor in the patrol car. Approximately 8 minutes later, NAVARRO and WRIGHT took
3 HERNANDEZ from the shade and pinned him to the ground on hot concrete. After initially being
4 pinned to the ground, HERNANDEZ's mother and brother pleaded with defendants NAVARRO and
5 WRIGHT to place blankets under HERNANDEZ to prevent injuries from the scorching hot concrete.
6 Blankets were present and offered to NAVARRO and WRIGHT to prevent injuries, but they refused.
7 During this time, the temperature was over 100 degrees Fahrenheit. The temperature was hot enough for
8 any person to understand the health risks of being pinned on the scorching concrete. HERNANDEZ was
9 pinned on the hot concrete for approximately 3 ½ minutes and additional time while NAVARRO and
10 WRIGHT were attempting to "wrap" HERNANDEZ. The "wrap" process well exceeded the time for
11 which appropriately trained persons should have been able to perform the procedure according to the
12 manufacturer's instruction and training materials. Once "wrapped," HERNANDEZ was transported to
13 San Joaquin General Hospital, where he was erroneously diagnosed as having abrasions and then taken to
14 jail.

15 16. On July 9, 2017, HERNANDEZ's brother arrived at the jail to pick up his brother. The next
16 day, July 10, 2017, it became obvious that the injuries were more severe than realized and HERNANDEZ
17 was taken by his brother back to San Joaquin General Hospital. At San Joaquin General Hospital
18 HERNANDEZ was diagnosed with severe burns for which that facility was incapable of treating and was
19 transported via ambulance to U.C. Davis Medical Center.

20 17. During all or part of time of these alleged events Defendant BUCKLEY was acting sergeant
21 and the supervising officer. He was on-scene and observed the alleged events and failed to intervene or
22 give proper supervisory instructions.

23 18. During all or part of these alleged events Defendant HUFF was present, observed and participated
24 in the alleged events.

25 19. The injuries HERNANDEZ sustained because of the conduct of Defendants, and each of
26 them, includes severe burns and other injuries requiring in-patient hospitalization. HERNANDEZ also
27 suffers on-going injuries such as permanent disfigurement, pain and suffering, emotional shock and distress,
28 economic loss, medical expenses and loss of earning capacity.

20. The Defendant's NAVARRO, WRIGHT, HUFF and BUCKLEY were not appropriately trained to understand, assess, and response to types of irrational behaviors exhibit by persons suffering from mental distress and exhibiting irrationality. This training, which is the standard of care implemented widely throughout this nation and in Northern California and consistent with Peace Officer Standards and Training (1) prepares officers to understand and accommodate the apparent irrationality of mentally ill persons and to gain compliance without implementing lethal force; (2) equips officers to evaluate the level of threat presented by irrational, mentally ill person; (3) mandates the use of specialized techniques to curb the irrational behavior and responses by mentally ill persons; (4) mandates calling for backup and allowing for a cooling off period before engaging in tactics that lead to the use of lethal force.

21. The specific techniques include (1) maintaining distance from the mentally ill subjects to avoid escalation of conflict; (2) engaging in non-threatening communication; (3) managing the contact with mentally ill persons; (4) calling person who are skilled with crisis intervention to the scene; (5) being prepared with non-lethal means of force before engaging with subjects suspected to be mentally ill; (6) taking subjects to the ground in a safe area.

21. Because Defendants here were inadequately trained in such techniques, there unnecessarily escalated their interaction with HERNANDEZ into a situation in which they deployed excessive, lethal force as described above.

22. Also, the Defendants were inadequately trained to employ the "wrap" device in part shown by taking a subject to the ground on hot summer days on scorching concrete in a safe manner.

23. In performing the acts and omissions set forth herein, the Defendants were acting malicious and despicable to cause serious injury to HERNANDEZ, or with a deliberate indifference as to whether he would suffer from serious physical injury as a result of their acts and/or omissions. Defendants also acted with the knowledge that their acts and omissions were in violation of established federally protected rights.

24. On or about December 15, 2017, HERNANDEZ timely presented a Government Claim to the CITY OF STOCKTON. A copy of the Claim is attached as Exhibit "1" to this Complaint and is incorporated by this reference.

25. The City of Stockton rejected HERNANDEZ's claim.

FIRST CLAIM

**Excessive Force (4th and 14th Amendments; 42 U.S.C. § 1983)
(Against NAVARRO, WRIGHT, HUFF, BUCKLEY and DOES 1-90)**

26. Plaintiff HERNANDEZ realleges and incorporates the allegations of Paragraphs 1 to 25, to the extent relevant and not in conflict with this claim, as though fully set forth in this claim

27. Fourth and Fourteenth Amendments prohibit the use of excessive force to effectuate the seizure of a person.

28. Defendants NAVARRO and WRIGHT were dispatched to the residence of HERNANDEZ for a welfare check, they handcuffed HERNANDEZ behind his back and to the extent he presented any danger to them or the public, he no longer presented such danger. It was unreasonable at that time to move HERNANDEZ from the shade and pin a nearly naked HERNANDEZ, to hot scorching concrete in order to effectuate a seizure.

29. Nevertheless, Defendants NAVARRO, WRIGHT, HUFF and BUCKLEY pinned HERNANDEZ to the hot concrete for several minutes notwithstanding the pleas of his mother and brother that he was burning and the defendants ignored the request of the mother and brother to place blankets between HERNANDEZ and the concrete. These acts by NAVARRO, WRIGHT, HUFF and BUCKLEY, and DOES 1-90 caused severe burns and other permanent injuries to HERNANDEZ entitling him to receive compensatory and punitive damages against said defendants.

WHEREFORE, Plaintiff HERNANDEZ prays for relief as set forth below.

SECOND CLAIM

**Failure to Supervise and Train (14th Amendment; 42 U.S.C. § 1983)
(Against CITY OF STOCKTON, SPD and DOES 91-100)**

30. Plaintiff HERNANDEZ realleges and incorporates the allegations of paragraphs 1 to 29, to the extent relevant and not in conflict with this claim, as though fully set forth in this claim.

31. The Defendant CITY OF STOCKTON, SPD and DOES 91-100 acquiesced in and/or were indifferent to the deficient training, and supervision, and/or discipline of its police officers' contacts with persons suffering from mental illness as set forth above. The maintenance of deficient supervision and training disregarded the known and/or obvious consequence that the omission would cause one or more of their police officers to violate the constitutional rights of persons suffering from mental illness that its police officers came into contact with.

32. Additionally, the Defendant, CITY OF STOCKTON, SPD and DOES 91-100 acquiesced in and/or were indifferent to the deficient training, and supervision, and/or discipline of its police officers' contacts with persons with whom the defendants use or attempt to use the "wrap" as a restraint device and the taking down and of pinning persons to the ground. The maintenance of deficient supervision and training disregarded the known and/or obvious consequence that the omission would cause one or more of their police officers to violate the constitutional rights of persons that its police officers would come into contact.

33. As a direct and proximate result of the Defendants CITY OF STOCKTON, SPD and DOES 91-100's actions and/or omissions, HERNANDEZ suffered severe injuries entitling him to compensatory damages against defendants.

WHEREFORE, Plaintiff HERNANDEZ prays for relief as set forth below.

THIRD CLAIM

Inadequate Customs, Policies and/or Practices (14th Amendment; 42 U.S.C. § 1983)
(Against Defendants CITY OF STOCKTON, SPD and DOES 91-100)

34. Plaintiff HERNANDEZ realleges and incorporates the allegations of Paragraphs 1 to 33, to the extent relevant and not in conflict with this claim, as though fully set forth in this claim.

35. Defendants CITY OF STOCKTON, SPD and DOES 91-100, knew they were, before the injuries caused to HERNANDEZ, duty bound to enact practices and procedures that permit its officers to interact effectively with mentally ill persons, who it knew do not respond to interaction with police officers as do mentally healthy persons. The State of California Commission on Peace Officer Standards and Training is mandated to provide training on the handling of persons; with mental illness. *See, e.g., Cal. Penal Code § 13519.2*

36. Nevertheless, Defendants CITY OF STOCKTON, SPD and DOES 91-100 have not enacted adequate customs, policies, and practices for interacting with the mentally ill and have acted with deliberate indifference towards the rights of the mentally ill. As such, the failure by the defendants was the moving force behind the faulty tactics deployed by their police officers resulting in the pinning a nearly naked HERNANDEZ on scorching hot concrete, causing severe injuries.

37. As a direct and proximate result of the Defendants CITY OF STOCKTON, SPD and DOES 91-100's actions and/or omissions HERNANDEZ suffered severe injuries entitling him to compensatory

1 damages against defendants.

2 WHEREFORE, Plaintiff HERNANDEZ prays for relief as set forth below.

3 **FOURTH CLAIM**
4 **Negligence; California Government Code §§ 820(a) & 815.2**
5 **(Against All Defendants)**

6 38. Plaintiff HERNANDEZ realleges and incorporates the allegations of paragraphs 1 to 37, to the
7 extent relevant and not in conflict with this claim, as though fully set forth in this claim.

8 39. California Government Code § 820(a) provides that a public employee is liable for injury caused
9 by his act or omission to the same extent a private persons is liable. Accordingly, Defendants NAVARRO,
10 WRIGHT, HUFF, BUCKLEY and DOES 1-90 are liable for their acts or omissions to the same extent
11 a private person would be liable for committing the same acts or omissions.

12 40. California Government Code § 815(a) provides that public entity is liable for the acts of its
13 employees performed in the course and scope of their employment with the public entity.

14 41. Defendants NAVARRO, WRIGHT, HUFF, BUCKLEY and DOES 1-90 owed a duty of care
15 to act reasonably when they were detaining HERNANDEZ.

16 42. Nevertheless, while NAVARRO, WRIGHT, HUFF, BUCKLEY and DOES 1-90, were acting
17 in their course and scope of their employment with THE CITY OF STOCKTON and SPD, they breached
18 their duty through unreasonable acts and/or omissions by pinning HERNANDEZ to scorching hot
19 concrete causing severe and permanent injuries to his person.

20 43. As a direct and proximate result of the conduct of Defendants NAVARRO, WRIGHT, HUFF,
21 BUCKLEY and DOES 1-90, HERNANDEZ suffered injuries entitling him to receive compensatory and
22 punitive damages against said defendants, and compensatory damages against Defendants CITY OF
23 STOCKTON, SPD and DOES 91-100.

24 WHEREFORE, Plaintiff prays for judgment from this Court as follows:

- 25 1. For compensatory, economic (special) and Non-economic (general) damages, in an amount
26 according to proof;
- 27 2. For punitive and/or exemplary damages on Defendants NAVARRO, WRIGHT, HUFF,
28 BUCKLEY and DOES 1-90 only;

///

3. For statutory attorney's fees and costs, pursuant to 42 U.S.C. § 1988; 42 U.S.C. § 1988; California Code of Civil Procedure § 1021.5; and any other applicable statutes.
4. For costs of suit; and
5. For such other and further relief as the court deems just and proper.

JURY TRIAL DEMAND

Plaintiff, DANIEL HERNANDEZ demands a trial by jury as to each of his claims.

DATED: May 17, 2018.

DRIVON TURNER & WATERS



DAVEY L. TURNER
Attorneys for Plaintiff, DANIEL HERNANDEZ

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Attorneys for Plaintiff Maddy Witt

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MADDY WITT;	CASE NO.:
Plaintiffs,	COMPLAINT FOR DAMAGES
v.	1. Violation of Plaintiff's Fourteenth Amendment Rights 42 U.S.C §1983 (Deliberate Indifference;
	2. Violation of Plaintiff's Fourth Amendment Rights 42 U.S.C §1983 (Unlawful Detention;
	3. Negligence;
CITY OF STOCKTON; STOCKTON POLICE OFFICER CELENTANO;	4. False Imprisonment
Defendants.	<u>DEMAND FOR JURY TRIAL</u>

Plaintiff, demanding a jury trial, brings this action against Defendants CITY OF STOCKTON, STOCKTON POLICE OFFICER CELENTANO, inclusive, for general, consequential, compensatory, punitive and statutory damages, costs and attorneys' fees resulting from defendants' unconstitutional and tortious conduct, and as grounds therefore allege as follows:

I. PARTIES

1. Plaintiff Maddy Witt, was at all times relevant to this complaint, living in the City of Stockton, which is located within the Eastern District of California.

2. Defendant CITY OF STOCKTON is a legal entity established under the laws of the state of California with all the powers specified and necessarily implied by the Constitution and laws of the State of California, and is a municipality located within the Eastern District of California.

3. Defendant CELENTANO, is police officer for the Stockton Police Department and was employed by the City of Stockton at the time of the incident in question. This Defendant is being sued in his individual capacity.

II. JURISDICTION AND VENUE

4. This action is brought pursuant to 42 U.S.C. §§ 1983, 1988 and 12132 and the Fourth and Fourteenth Amendments to the United States Constitution, made applicable to Defendants through the Fourteenth Amendment to the United States Constitution. This Court has jurisdiction over plaintiffs' claims under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a). This Court has further jurisdiction over plaintiffs' state law claims under 28 U.S.C. § 1367 as those claims form part of the same case and controversy under Article III of the United States Constitution.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the events giving rise to this action occurred in the City of Stockton California, which is located in this district.

III. STATEMENT OF FACTS

6. On or around September 10, 2017, at approximately 8:00 p.m., Maddy Witt (hereinafter referred to as "Plaintiff") who was age 69 years old at the time, was inside her sister's home.

7. Stockton Police Officer Celentano (hereinafter referred to as "Defendant Officer") entered inside the plaintiff's sister's home allow the plaintiff's brother in law's daughter gather personal belongings of the plaintiff's brother in law.

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2 8. During this time period, the plaintiff observed that her brother in law's daughter was
3 stealing property that belonged to her sister.

4 9. The plaintiff attempted to approach her brother in law's daughter to instruct her not to
5 steal any of her sister's property, when the Defendant ordered the plaintiff to sit down in a chair
6 and remain seated in a chair.

7 10. The plaintiff gave the Defendant notice that she had a pre-existing back injury that
8 prevents her from being able to sit for long periods of time without getting up.

9 11. The Defendant then informed the plaintiff that if she got up from her seat that she would
10 be arrested.

11 12. As a result of the threat of arrest, the plaintiff remained seated despite being in severe
12 pain.

13 13. Approximately two hours later, the plaintiff who by then was in severe pain and had
14 urinated on herself, was finally allowed to get out of her seat.

15 14. As to the state claims against the City of Stockton, plaintiff filed a timely government
16 claim against defendants pursuant to California Government Code §910, et seq., for negligence,
17 false arrest (false imprisonment). Plaintiff's claims were subsequently rejected by the City of
18 Stockton on December 20, 2017.

19 **IV. CAUSES OF ACTION**

20 **(Violation of Plaintiff's Fourteenth Amendment Rights 42 U.S.C §1983 (Due Process) –**
21 **As to Defendant Officer)**

22 15. The Defendants violated the Plaintiff's due process rights under the Fourteenth
23 Amendment to the United States Constitution.

1 16. That the Defendant Officer, who had notice that the plaintiff had pre-existing back injury
2 that prevented her from sitting down for long periods of time, placed the Plaintiff in “actual,
3 particularized danger” when he deliberately and intentionally

4 17. That there was *Deliberate Indifference* on the part of the Defendant because he had
5 notice that the Plaintiff had a pre-existing back injury that prevented her from sitting down for
6 long periods of time, and he ordered her (under threat of arrest) to sit down for approximately
7 two hours despite this notice.

8 18. That the Plaintiff suffered *harm* stemming from the Defendants’ *Deliberate Indifference*,
9 because the Plaintiff’s injuries and the pain and suffering that she experienced were severely
10 exacerbated by the Defendant’s conduct, and this conduct placed the Plaintiff in a worse position
11 than she was otherwise in.

12 19. Defendant Officer violated Plaintiff’s constitutional rights and resulted in Plaintiff’s
13 suffering, and were a proximate and direct cause of Plaintiff’s injuries.

14 20. The conduct of the Defendant Officer, was intended to cause injury to Plaintiff and was
15 done in conscious disregard of Plaintiff’s rights and safety and thus constitutes malice and
16 plaintiff is entitled to recover punitive damages from the Defendant Officer in an amount
17 according to proof.
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**(Violation of Plaintiff's Fourth Amendment Rights 42 U.S.C §1983 (Unlawful
Detention) – As to Defendant Officer)**

21. That plaintiff was detained by the Defendant without any reasonable suspicion that she had committed a crime, that she was in the process of committing a crime, or that any criminal activity involving plaintiff was afoot.

22. That this unlawful detention took place when the Defendant ordered the plaintiff to remain seated in a chair for approximately two hours under the threat of arrest if she got up from the chair without his approval.

23. That a reasonable person under the same circumstances would not have believed that they were free to get out of the chair without being arrested.

24. That the Defendant imposed this unlawful detention upon the plaintiff by means of a show of his authority to arrest the plaintiff if she did not do as he had instructed.

25. That as a result of this unlawful detention, the plaintiff's freedom of movement was restrained.

(Negligence – As to All Defendants)

26. By virtue of the foregoing, Defendant Officer owed Plaintiff a duty of due care not to cause the Plaintiff physical harm in his handling of the plaintiff.

27. That this duty was breached by the defendant negligence and failure to exercise due care in his handling of the Plaintiff when he ordered the plaintiff (under threat of arrest) to sit down in a chair and remain seated for approximately two hours, despite being given notice that plaintiff had a pre-existing back injury that prevented her from being able to sit for long periods of time without getting up.

1
2 28. As a direct and proximate cause of the aforementioned acts of Defendant, Plaintiff was
3 forced to endure severe back pain and the humiliation of urinating on herself.

4
5 29. Defendant Officers are liable for all injuries caused by their acts, to the same extent as a
6 private person pursuant to California Government Code Section 820(a).

7
8 30. Defendant as a public employee is not exonerated or immune from liability for
9 negligence for causing the Plaintiff to suffer harm pursuant to California Government Code
10 Section 820.8.

11
12 31. Because the Defendant Officer was acting as and employee of STOCKTON at the time of
13 the incident, and because he was acting within the scope and course of his employment and
14 under the direct control and supervision of STOCKTON, STOCKTON is liable to the Plaintiff
15 for negligence pursuant to California Government Code §815.2.

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(False Imprisonment – As to All Defendants)

25 32. That plaintiff was detained and confined within a bounded area by the Defendant without
26 any reasonable suspicion that she had committed a crime, that she was in the process of
27 committing a crime, or that any criminal activity involving plaintiff was afoot.

28 33. That this unlawful confinement took place when the Defendant ordered the plaintiff to
29 remain seated in a chair for approximately two hours under the threat of arrest if she got up from
30 the chair without his approval.

31 34. That this unlawful confinement was committed without the plaintiff's consent.

32 35. That the plaintiff was aware of this confinement.

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2 36. That the plaintiff was confined within a bounded area because a reasonable person under
3 the same circumstances would not have believed that they were free to get out of the chair
4 without being arrested.

5 37. That as a result of this false imprisonment, the plaintiff's freedom of movement was
6 restrained and she was injured.

7 **V. PRAYER FOR RELIEF**

8 Plaintiffs pray for judgment against defendants as follows:

- 9 1. For compensatory damages and other special damages according to proof;
10 2. For general damages according to proof;
11 3. For punitive damages against all individual defendants according to proof;
12 4. The prejudgment interest at the legal rate according to proof;
13 5. For costs and reasonable attorneys' fees as provided by law; and
14 6. For such other relief as the Court may deem fit and proper.

15 **VI. JURY DEMAND**

16 Plaintiffs demand a jury trial in this action.

17 LAW OFFICE OF STANLEY GOFF

18 Dated: June 9, 2018

19 /s/ STANLEY GOFF

20 STANLEY GOFF
21 Attorney for Plaintiff
22 Maddy Witt
23
24

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9 Attorneys for Plaintiffs ELSA FLORES, dba CASA
10 FLORES, BRENDA SANDIGO, dba GUSTY'S WINGS
11 and TROY BUKE and ROSANN CASCIARO- BURKE,
12 dba EMPRESSO COFFEE

13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF SAN JOAQUIN

15 ELSA FLORES dba CASA FLORES,
16 BRENDA SANDIGO dba GUSTY'S
17 WINGS, TROY BURKE AND ROSANN
18 CASCIARO-BURKE dba EMPRESSO
19 COFFEE

20 Plaintiffs,

21 v.

22 CITY OF STOCKTON, a California
23 municipal corporation; DOES 1-50,
24 inclusive,

25 Defendant.

CASE NO. STK-CV-UBC-2018-9502

**AMENDED COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF BASED ON
VIOLATION OF CIVIL RIGHTS
(PROCEDURAL DUE PROCESS, EQUAL
PROTECTION, TAKING OF PROPERTY,
AND FOURTH AMENDMENT SEIZURE
OF PROPERTY),**

[DEMAND FOR TRIAL BY JURY]

26 COMES NOW, Elsa Flores dba Casa Flores, ("Flores"), Brenda Sandigo dba Gusty's
27 Wings, ("Sandigo"), Troy Burke and Rosann Casciaro-Burke dba Empresso Coffee, ("Burke"),
28 collectively hereinafter referred to as ("Plaintiffs") complain and allege against -Defendant City
of Stockton, a California municipal corporation (the "City"), and DOES 1 - 50, inclusive, and
each of them, as follows:

FILED
2018 AUG -8 PM 2:44
ROSA JUNQUEIRO, CLERK
BY RITA L. GOMEZ
DEPUTY

1 I. NATURE OF THE CASE

2 1. The facts and circumstances that are the subject matter of this lawsuit arise from
3 unlawful actions taken by the City and Docs 1 – 50 against Plaintiffs who were Tenants within
4 that certain commercial real property located on the Miracle Mile at 1825 – 1831 Pacific Avenue,
5 in Stockton, California. Prior to the City’s wrongful actions as alleged herein, Plaintiffs operated
6 established restaurants and a coffeehouse. The City’s conduct caused Plaintiffs to lose their
7 businesses.

8 A. **The Property**

9 2. The City issued an order on June 7, 2017, requiring the immediate evacuation of
10 certain real property owned by Christopher “Kit” Bennitt (“Bennitt”) and located on the Miracle
11 Mile at 1825 – 1831 Pacific Avenue in Stockton, California, the (“Property”), which include eight
12 (8) business suites, three (3) of which prior to June 7, 2017, were occupied by Plaintiffs.

13 Specifically, these included Casa Flores which was owned by Elsa Flores and operated from the
14 Property for over twenty-five (25) years; Gusty’s Wings which was owned and operated by
15 Brenda Sandigo; and the Empresso Coffeehouse owned and operated by Rosann and Troy Burke.
16 The City gave no prior notice whatsoever to Plaintiffs, Bennitt or the other tenants that such
17 evacuation would be ordered. The City represented that it was forced to resort to such an extreme
18 measure because the Property was riddled with code violations that, according to the order, posed
19 an “immediate threat to the life, limb, health, safety, and welfare of the public at large and the
20 occupants of [the] Property.” The City claimed that such an “immediate threat” existed despite
21 the City stating that it had been aware of the alleged violations since at least 2012.

22 3. Plaintiffs are informed and believe and on that basis allege that upon being
23 informed that the City was immediately “red tagging” the Property and forcing Plaintiffs out of
24 business, Bennitt immediately retained three independent licensed design professionals from the
25 respected firm of Richard Avelar & Associates (“RA&A”) who, after reviewing the City’s file
26 and conducting a full inspection of the Property, issued a written report opining that “the
27 requirement by the City to completely vacate the building was unnecessarily heavy-handed based
28 on the issues identified by the City and the conditions we observed” and that “none of our

1 observations rise to the level of an imminent life safety violation which would require either
2 individual tenant spaces or the entire building to be vacated.” Nevertheless, Bennitt was
3 committed to cooperate with the City, as he realized that such an approach would be more
4 efficient than litigation and in the best interest of all persons affected by the City’s evacuation
5 order.

6 4. Generally, the violations alleged by the City did not consist of punch-list items that
7 could quickly be fixed. Rather, they were based upon the City’s contention that it did not have a
8 set of “as built” plans reflecting the current layout of the Property’s approximate 32,000 square-
9 foot footprint. The City made clear in writing that “no construction work should take place at the
10 Property without first submitting plans and obtaining a valid building permit from the City’s
11 Building Department.” Bennitt’s design professionals pushed forward diligently, with Bennitt
12 incurring in excess of \$98,000.00 in architectural and other design professional fees between June
13 through September of 2017.

14 5. On information and belief, Bennitt, his attorneys, and RA&A had numerous
15 meetings with the City before finally coming to an agreement on August 21, 2017, on a specific
16 protocol that RA&A would follow with respect to the submission of plans (the “Agreed
17 Protocol”). At this point Plaintiffs’ businesses had already been shut down for nearly three (3)
18 months and the City should have known that time was critical. Consistent with the Agreed
19 Protocol, RA&A submitted the plans on September 8, 2017, which were generally consistent with
20 the “as built” plans the City has had on file for nearly the past decade. After several further
21 meetings between RA&A and City representatives to address the City’s plan-check comments,
22 and the resulting further submissions by RA&A, the City informed Bennitt by written
23 correspondence dated October 30, 2017, that his permits were approved and “may be picked up.”
24 At this point Plaintiffs had been shut down for almost five (5) months. Nevertheless, that same
25 day the City covertly filed a “Petition For Nuisance Abatement And Receivership” against
26 Bennitt, representing therein that the “City has attempted to gain Bennitt’s voluntary compliance
27 to rehabilitate the Nuisance Properties, to no avail,” and that Bennitt “failed to abate the
28 violations of law or take corrective action.” When Bennitt’s licensed contractor attempted to

1 retrieve the permit on November 3, 2017, and pay the required permit fees, the City informed him
2 that the permit was now subject to a "litigation hold," would not be released, and sent Bennett's
3 contractor away empty-handed.

4 6. Plaintiffs are informed and believe, and on that basis allege, that there is and
5 never was any condition of the Property posing any "immediate threat" to anyone, that the City
6 issued the evacuation order, and is now attempting to change the Agreed Protocol, in retaliation
7 against Bennett, to the direct detriment of Plaintiffs, and to otherwise cause Bennett to lose income
8 and continue to lose income from the Property, and to reduce the value of the Property, all so that
9 the City can ultimately gain permanent possession and control of the Property for its desired use
10 of same..

11 **II. THE PARTIES**

12 7. Flores is and was at all times herein mentioned a resident of the County of San
13 Joaquin.

14 8. Sandigo is and was at all times herein mentioned a resident of the County of San
15 Joaquin.

16 9. Rosann and Troy Burke were and are at all times herein mentioned residents of the
17 County of San Joaquin.

18 10. Bennett is an individual residing within the County of San Joaquin, and the fee title
19 owner of that certain real property located on the Miracle Mile at 1825 – 1831 Pacific Avenue in
20 Stockton, California (previously identified as the "Property"), which includes eight (8) business
21 suites that, prior to June 7, 2017, were occupied by Plaintiffs and other establishments.

22 11. Defendant CITY OF STOCKTON (previously identified as the "City") is a charter
23 city in the County of San Joaquin, California.

24 12. The true names and capacities, whether individual, corporate, associate or
25 otherwise, herein named as Does 1 through 50 are unknown to Plaintiffs at this time. Plaintiffs
26 are informed and believe, and on that basis allege, that each of the Doe defendants is responsible
27 in some manner for the occurrences herein referred to, and that the injuries and damages as herein
28 alleged were proximately caused by those defendants. Plaintiffs sue said defendants by such

1 fictitious names on the grounds that the true names and capacities of said defendants are unknown
2 to Plaintiffs at this time and will amend this -Complaint as and when the true names and
3 capacities of the Doe defendants are ascertained. Each reference in this Cross-Complaint to the
4 "City" or "defendants" also refers to defendants sued under fictitious names.

5 13. Each defendant is, and at all times mentioned herein was, the agent, employee, or
6 representative of the other, and each defendant in doing the acts or in omitting to act as alleged
7 herein, unless otherwise specified herein, was acting within the course and scope of his or her
8 actual or apparent authority pursuant to such agency, or the alleged acts or omissions of each
9 defendant as agent were subsequently ratified and adopted by each defendant as principal.

10 **III. FACTUAL BACKGROUND REGARDING THE CITY'S**
11 **UNLAWFUL CODE ENFORCEMENT PRACTICES**

12 14. Plaintiffs are informed and believe, and on that basis allege, that in or about 2001,
13 the City desired to redevelop the core of its downtown area, and other key areas such as the
14 Miracle Mile, and to that end, began acquiring commercial properties through its power of
15 eminent domain, followed by private redevelopment. Plaintiffs are further informed and believe
16 that the City, however, eventually concluded that acquisition of all the areas it desired to raze and
17 develop would be too expensive to accomplish, so the City developed a covert plan to acquire the
18 targeted commercial properties by unlawfully abusing its building code enforcement powers to
19 reduce the value of such properties, which included burdening the properties with unsubstantiated
20 code violations and/or requiring immediate evacuation of, or demolishing, such properties based
21 upon unsubstantiated health and safety concerns.

22 15. Plaintiffs are informed and believe, and on that basis allege, that in furtherance of
23 the plan set forth above, the City was able to financially strangle the owners of such properties
24 until they succumbed to the City's unreasonable purchase offers and/or was able to create an
25 inventory of cheaper raw land available for redevelopment by demolishing buildings and thereby
26 avoiding having to pay for existing improvements in eminent domain proceedings. Plaintiffs are
27 being further informed and believe that the City refused to grant variances and recorded "Notices
28 of Intent to Abate" these properties, alleging that code violations rendered the structures unsafe

1 which, in turn, prevented the property owners from rehabilitating their properties and obtaining
2 reconstruction and rehabilitation financing.

3 16. Plaintiffs are informed and believe, and on that basis allege, that in furtherance of
4 the plan set forth above, the City created an interdepartmental code inspection team known as the
5 Community Health Action Team ("CHAT"), the *purported* purpose of which was to enforce
6 health, building, and safety regulations in the City's downtown area, although the *actual and*
7 *covert* purpose of which was to carry out the City's unlawful plan set forth above. Plaintiffs are
8 further informed and believe that CHAT thereafter inspected approximately thirty-two (32)
9 single-room occupancy hotels ("SRO Hotels") in the downtown area, which inspections resulted
10 in the closure of nine (9) properties, six (6) of which were evacuated on an "emergency" basis.

11 17. Plaintiffs are informed and believe, and on that basis allege, that when the City's
12 then Community Development Director, John Carlson, refused to go along with the City's covert
13 and unlawful plan, the City terminated, or effectively terminated his employment.

14 18. Plaintiffs are informed and believe, and on that basis allege, that as a result of the
15 unlawful plan set forth above, the City and/or the individual City representatives behind such plan
16 were named as defendants in numerous lawsuits filed by the owners and tenants of the real
17 properties impacted by such unlawful plan, including, but not limited to, *Wong v. City of Stockton*
18 (San Joaquin County Superior Court Case No. CV027517), *Price, et al. v. City of Stockton*
19 (USDC Case No. 02-16155, 02-16270), *Portale v. City of Stockton, et al* (USDC Case No. CIV.S-
20 02-0988 LKK JFM,) and *Portale v. City of Stockton* (San Joaquin County Superior Court Case
21 No. CV020363). Plaintiffs are informed and believe that after the City's unlawful plan was
22 exposed in the *Portale* cases through the deposition testimony of the City's former Community
23 Development Director, John Carlson, the City settled the *Portale* cases for the amount of
24 \$1,572,750.00 in 2006. A true and correct copy of the City memorandum reflecting the settlement
25 is attached hereto as **Exhibit 1**.

26 19. Plaintiffs are informed and believe, and on that basis alleges, that during his
27 deposition in the *Portale* cases, Carlson was asked the following questions, and gave the
28 following answers. When asked at his deposition, "Is it your opinion that the City singled out

1 certain hotels within its jurisdiction to apply this code enforcement procedure to so as to
2 eventually obtain control of those hotels?" He responded, "Yes, they actually had a list." Carlson
3 Depo. 106:10-19. Further, Carlson described weekly meetings at which then City Manager Mark
4 Lewis would say "make my day" when asking for information regarding how the City's illegal
5 scheme was proceeding against the targeted hotels. Carlson Depo. 111:8-18. Staff would then
6 proceed to inform then City Manager Mark Lewis "that things were moving very fast to achieve
7 the goal of basically finding all kinds of violations, issuing certain orders to vacate the structure
8 and/or coming along and offering to buy the property at a cheap price." Carlson Depo. 111:27-
9 112:3. Moreover, when Carlson was asked, "Did you develop the understanding that it didn't
10 matter if a hotel owner addressed a particular violation, that the City would find another one?" he
11 responded: "Yes. They would find some way to achieve the end. And different hotels and
12 different property owners were treated differently, again, the end was the City wants control."
13 Carlson Depo. 112:18-24. Finally, when Carlson was asked "Did you perceive the code
14 enforcement campaign . . . as a campaign that was designed to force these hotels out of
15 business?", he answered "Yes." Question: "And force these hotel owners to come to the table for
16 purposes of the City buying these hotels on the cheap?" Answer, "Yes." Carlson Depo. 115:19-
17 25. True and correct copies of the excerpts from Carlson's deposition are collectively attached
18 hereto as **Exhibit 2**.

19 **IV. FACTUAL BACKGROUND REGARDING THE PROPERTY**

20 **A. Bennitt Attempted To Resolve The Dispute With The City Beginning In 2014**

21 20. On information and belief, in 2014, after Bennitt received notices from the City
22 requiring the submission of "as built" plans for the Property, Bennitt retained Apex Architecture
23 ("Apex"). However, the City and Bennitt came to an impasse after the City cursorily rejected two
24 separate sets of "as built" plans thereafter submitted by Apex. After Apex submitted the first set
25 of "as built" plans reflecting the "shell" of the building (the "2014 Shell Plans"), the City
26 demanded "as built" plans reflecting the tenant improvements for each of the eight business suites
27 (the "2014 TI Plans"). Although Apex complied shortly thereafter and submitted the 2014 TI
28

1 Plans, the City conclusively rejected such plans, asserting its belief that they did not accurately
2 identify the tenant improvements.

3 21. On information and belief, shortly thereafter, the City and Bennitt began
4 negotiating an agreement to define and identify the scope of the City's alleged concerns, and a
5 process by which such concerns would be addressed. After negotiating the terms of the
6 agreement for approximately two years (with delays resulting from the City's employee retention
7 issues, including having transitioned the file to four (4) different deputy City attorneys during
8 such two-year period), the agreement was finally entered into in October 2016, a true and correct
9 copy of which is attached hereto as **Exhibit 6**. The Agreement identifies notices issued to
10 Bennitt, resulting from several City inspections, dating back to 2012 "for work which the CITY
11 claims require building permits and/or removal of structures on the Property Pursuant to the
12 Agreement, Bennitt agreed:

13 [T]o have a set of plans prepared by architect and/or engineers
14 which will identify the current as built condition of the Property and
15 will identify the uses of each portion of the Property as now in use
16 and will identify, as the scope of work, all construction, removal,
modification, and/or completion of work on the Property being
proposed

17 22. Pursuant to the Agreement, the above-referenced plans were to be submitted to a
18 third-party plan-check firm by March 6, 2017, but the Agreement did not provide a deadline for
19 such firm to complete its work. Nevertheless, once the plan check firm completed its work, the
20 Agreement provided that all work would thereafter be completed within 180 days of Bennitt
21 obtaining a permit. The City denied Bennitt's written request dated March 8, 2017, a true and
22 correct copy of which is attached hereto as **Exhibit 7**, for an extension of the plan-check
23 requirement without giving any reason for such denial, despite the Agreement expressly
24 contemplating that such extension may be requested and given. The City wholly failed to respond
25 to a letter dated March 27, 2017, from Bennitt's counsel, a true and correct copy of which is
26 attached hereto as **Exhibit 8**, requesting that the City reconsider its denial of the requested
27 extension and further explaining:

28 The deadline for submittal to the third-party plan check firm was

1 March 6, 2017. The agreement did not provide any deadline for the
2 third-party plan check firm to complete its work. When Mr. Bennett
3 discussed the timing with the third-party plan check firms that were
4 considered, the estimates ranged from 45 days to 90 days for them
5 to complete their work. The agreement did provide that Mr. Bennett
6 would respond to comments from the third-party plan check firm
7 within 15 business days. Only after Mr. Bennett responded with
8 corrections would the City begin its process of verifying and
9 approving the corrections and the plans and specifications. As now
10 proposed, the submittal will be directly to the City, by April 3, and
11 it will be completely in the City's control when the comments and
12 requests for corrections come back to Mr. Bennett. Once received,

13 the time limits set out in the agreement would be followed. **The**
14 **result will be that the completion of the project will be ahead of**
15 **the original schedule set out in the agreement.** [Emphasis added].

16 23. By written correspondence dated October 20, 2016, long prior to the expiration of
17 Bennett's March deadline under the Agreement, the City requested that Bennett allow another fire
18 inspection of the Property (which was in addition to at least one or more inspections the City had
19 conducted of the Property since negotiations began for the Agreement), and that further
20 inspection occurred shortly thereafter. Although Bennett's counsel advised City representatives
21 that the Bennett Property was open to their fire inspections and requested that he be provided with
22 any reports that resulted from any such inspections, no such reports were ever received from the
23 City (other than the City's evacuation order of June 7, 2017).

24 **B. The City Conducts A Further Inspection of The Property On April 26, 2017**

25 24. Pursuant to a subsequent demand by the City, another further inspection of the
26 Property was scheduled for, and occurred on, April 26, 2017. An attorney for Bennett, attended
27 the inspection, and his observations and discussions with City representatives made it abundantly
28 clear that there were no imminent life-safety issues requiring immediate evacuation of the
Property.

29 25. Plaintiffs are informed that during the inspection, an attorney for Bennett had a
30 discussion with two City attorneys and requested that, if there were any issues that posed health
31 and safety concerns, they let him know so that they could be fixed immediately, and both City
32 attorneys confirmed that they would so advise. However, no mention of any such health and
33 safety issues was made until Bennett's counsel received a fax from the City on the morning of

1 June 7, 2017, **as set forth below**, advising that the tenants were being required to evacuate the
2 Bennitt Property **immediately** due to “hazardous and dangerous conditions located throughout
3 the building” that “pose such an immediate threat to the life, limb, health, safety and welfare of
4 the public at large and the occupants of this property as to constitute an emergency.”

5 26. Plaintiffs are informed that also during the April 26th inspection, counsel for
6 Bennitt witnessed a discussion between the fire inspector and the Plaintiff Sandigo. The inspector
7 stated to Sandigo that an issue that needed to be addressed with respect to the “fat fryer,” and
8 characterized the issue as important but not requiring immediate attention. Nevertheless, the
9 issue with the “fat fryer” was subsequently characterized as “dangerous and hazardous” in the
10 City’s evacuation order of June 7, 2017 and constituted the primary issue the City relied upon in
11 attempting to justify the immediate evacuation of Gusty Wings.

12 27. At no time during the inspection of April 26, 2017, or any time prior to June 7,
13 2017, was Bennitt, his counsel, or any of the tenants informed that any of the issues observed at
14 the inspection, or over the past five years for that matter, rose to the level of requiring immediate
15 evacuation of the Property.

16 **C. The City Requires the Immediate Evacuation of The Property On June 7, 2017**

17
18 28. On June 7, 2017, the City issued an order requiring the immediate evacuation of
19 the Bennitt Property, including all eight (8) business suites, without giving any prior notice to
20 Bennitt or any of the tenants of the Property, or any opportunity for any of the affected persons to
21 be heard (the “Order”). A true and correct copy of the Order is attached hereto as **Exhibit 9**. The
22 City represented that it was forced to resort to such an extreme measure because the Property was
23 riddled with code violations that, according to the Order, posed an “immediate threat to the life,
24 limb, health, safety, and welfare of the public at large and the occupants of [the] Property.”

25 29. Plaintiffs are informed and believe, and on that basis allege, that although the City
26 did not give any prior notice of the Order to Bennitt or any of the tenants of the Property, City
27 representatives met with and/or discussed the City’s evacuation plan with at least one real estate
28 investor, prior to June 7, 2017, who was interested in purchasing the Property.

1 30. Plaintiffs are informed and believe, and on that basis allege, that at an 11:00 a.m.
2 meeting on June 7, 2017, between City representatives and Plaintiffs, City representatives stated
3 that they had been trying to get Bennitt to repair the alleged violations for over the past 5 years.
4 When City representatives were asked what triggered the need for immediate evacuation if they
5 have truly known of the alleged violations for the past 5 years, City representatives responded by
6 stating that they have been going through the “regulatory process” necessary for the evacuation
7 ever since the agreement expired in March 2017, and that such process has taken months.

8 31. Plaintiffs are informed and believe, and on that basis allege, that there is no such
9 “regulatory process” whatsoever contemplated by the Uniform Code for the Abatement of
10 Dangerous Buildings (the “Code”), the legal authority purportedly relied upon by the City, as set
11 forth in the Order, in requiring the evacuation. Specifically, pursuant to Section 401.2 of the
12 Code, the City had a few options upon determining what it purportedly believed were dangerous
13 life-safety violations, including (1) issuing a notice requiring that repairs commence within sixty
14 (60) days, or (2) in the most extreme circumstance in which a true “emergency” is presented,
15 requiring the immediate evacuation of the Property.

16 32. The City has since offered no explanation whatsoever to Plaintiffs, or as far as
17 Plaintiffs know to Bennitt, as to why, if the City was truly going through the “regulatory process”
18 since March, 2017, with the intent of ordering an immediate evacuation of the Property on June 7,
19 2017, the City did not use such intervening time to inform Plaintiffs or Bennitt that such
20 “regulatory process” was underway or that immediate evacuation will be ordered if the repairs
21 were not commenced by June 7, 2017.

22 33. Plaintiffs are informed and believe, and on that basis allege, that a Fox 40 article
23 dated June 8, 2017, quotes City Fire Chief Erik Newman as stating: “Yeah, we could have done
24 things maybe a little bit different, we could.” Plaintiffs are further informed and believe, and on
25 that basis allege, that other statements given by those who participated in the decisions leading up
26 to issuance of the Order show that the City acted upon a lack of information and/or improper
27 motives in issuing the Order. For example, in an article published by the Stockton Record on June
28 7, 2017, Code Enforcement Director Peter Lemos was quoted as stating: “The Empire could have

1 been a catastrophic event if a large event was going on.” In fact, the Empire Theatre had been
2 completely closed to the public and all types of private events for several months prior to issuance
3 of the Order.

4 34. Plaintiffs are informed and believe, and on that basis allege, that the City secretly
5 planned its strategy over the course of at least several months prior to issuing the evacuation
6 Order on June 7, 2017 and had ample opportunity to notify Plaintiffs and Bennitt, and afford such
7 persons affected by the Order with an opportunity to be heard with respect to whether the alleged
8 condition of the Property truly posed an “immediate threat” to life but failed to do so.
9 Specifically, the City claims to have known of the existence of the alleged conditions giving rise
10 to the Order since at least 2012, and certainly knew of such alleged conditions as of the date of
11 the City’s inspection on April 26, 2017. Plaintiffs are informed and believe, and on that basis
12 allege, that, rather than provide such notice and opportunity to be heard during the months prior
13 to issuance of the Order, the City utilized such time to secretly prepare for the evacuation,
14 including, but not limited to, gathering and preparing materials for the meeting to be held on June
15 7, 2017, and preparing a detailed release for a press conference that afternoon. The City’s secret
16 strategy and significant delay in issuing the evacuation Order not only violates due process, but
17 wholly undermines the City’s contention that any condition of the Property posed any “immediate
18 threat” to life or otherwise constituted an “emergency.”

19 35. Shortly after issuance of the Order, and by written correspondence dated June 12,
20 2017, to Deputy City Attorney Angel Solis (“Solis”), Bennitt’s counsel stated in relevant part:
21 “My client and I, and our design professionals, would like to meet with City representatives as
22 soon as possible to discuss the alleged violations and explore an expeditious resolution. . . .
23 Please let me know some dates that work for the City and I will coordinate with my team.” By
24 written correspondence of the same date, attorney Solis stated: “I have received your request and
25 my office is in the process of figuring out the City representatives’ availability. I will follow up
26 with you as soon as I can.” A true and correct copy of this email correspondence is attached
27 hereto as **Exhibit 10**. However, as set forth below, no such dates for a meeting were provided by
28

1 the City until after Bennitt's counsel repeated the request during a phone discussion with
2 Assistant City Attorney Susana Alcala-Wood ("Wood") on July 7, 2017.

3 36. The City's Order expressly stated that "**NOTICE IS HEREBY GIVEN THAT**
4 **THIS PROPERTY IS ORDERED VACATED JUNE 7, 2017, IMMEDIATELY FOR**
5 **BUSINESS PURPOSES pursuant to Uniform Code for the Abatement of Dangerous**
6 **Buildings, Section 401.2 et seq.**" Section 205.1 of the Uniform Code for the Abatement of
7 Dangerous Buildings (the "Code") addresses the composition of the board which decides appeals,
8 and provides in relevant part:

9 In order to hear and decide appeals of orders, decisions, or
10 determinations made by the building official relative to the
11 application and interpretation of this code, there shall be and is
12 hereby created a board of appeals consisting of members who are
qualified by experience and training to pass upon matters pertaining
to building construction and who are not employees of the
jurisdiction.

13 37. Plaintiffs are informed and believe, and on that basis allege, that the City adopted
14 the Code through Section 15.28.010 of the City's Municipal Code. Consistent with the adoption
15 of the Code, it appears the City formed a "Building and Housing Board of Appeals" which,
16 according to the City's official website, has the purpose of hearing "appeals of decisions made by
17 the Building Official ... from aggrieved parties relative to the application of the ... Uniform Code
18 for Abatement of Dangerous Buildings" A true and correct copy of the City's official
19 website page is attached hereto as **Exhibit 11**.

20 38. On June 15, 2017, Bennitt timely filed an appeal of the Order to the City's
21 "Building and Housing Board of Appeals" (the "Board"), a true and correct copy of which is
22 attached hereto as **Exhibit 12**. However, the City's official website page (Exhibit 11) states that
23 the Board, which is to consist of 7 members, currently has 7 vacancies. Although the hearing on
24 the appeal was subsequently scheduled by the City before a City administrative hearing officer, it
25 was vacated as a result of a calendar conflict of Bennitt's counsel and was to be rescheduled upon
26 the City confirming that the appeal would be heard by the Board. By written correspondence to
27 the City dated July 7, 2017, a true and correct copy of which is attached hereto as **Exhibit 13**,
28 Bennitt's counsel stated: "Unless written notification is received by my office from the City on or

1 before July 14, 2017, stating otherwise, I will assume that City's 'Building and Housing Board of
2 Appeals' is currently nonexistent and that the City does not intend to afford my client the proper
3 due process required pursuant to the Uniform Code for the Abatement of Dangerous Buildings."
4 Shortly after such correspondence was sent to the City, attorney Wood verbally confirmed to
5 Bennitt's counsel that such Board does not exist. Bennitt is informed and believes that, aside from
6 the City declaring the existence of an "emergency" in requiring the immediate evacuation of the
7 Bennitt Property when in fact no such "emergency" existed, and thereby denying Bennitt his due
8 process rights prior to such evacuation, the City took such action under the Code without any
9 intention of affording Bennitt the required due process appeal rights, and in fact knowing that it
10 was not able to afford Bennitt such due process appeal rights.

11 **D. Bennitt Retains Licensed Design Professionals Who Opine That The City's**
12 **Evacuation Order Was "Unnecessarily Heavy-Handed"**

13 39. Plaintiffs are informed and believe that on or about June 13, 2017, Bennitt retained
14 three (3) independent licensed design professionals from the respected firm of Richard Avelar &
15 Associates ("RA&A") who reviewed the City's file on this matter and conducted a full inspection
16 of the Bennitt Property. RA&A issued a preliminary report dated July 5, 2017, opining that "the
17 requirement by the City to completely vacate the building was unnecessarily heavy-handed based
18 on the issues identified by the City and the conditions we observed" and that "none of our
19 observations rise to the level of an imminent life safety violation which would require either
20 individual tenant spaces or the entire building to be vacated" (the "Report"). A true and correct
21 copy of the Report is attached hereto and included within Exhibit 13.

22 40. By written correspondence from Bennitt's counsel dated July 7, 2017 (Exhibit 13),
23 the City was provided with a copy of the Report and, based thereon, was requested to
24 immediately rescind its Order and allow the tenants to re-occupy the Bennitt Property. No
25 written response to this correspondence was ever provided by the City.
26
27
28

1 **E. Bennitt Cooperates With the City, And The Parties Exchange Information To**
2 **Ascertain What Additional “Plans” The City Will Require**

3 41. On or about July 7, 2017, shortly after sending his correspondence of the same
4 date to the City (Exhibit 13), Bennitt’s counsel had a telephone discussion with attorney Wood to
5 discuss whether the City would be rescinding its Order in light of RA&A’s Report. After Wood
6 stated her belief that the City would nevertheless require the preparation and submission of full
7 “as built” plans, Bennitt’s counsel again requested that the City schedule a meeting between
8 representatives for Bennitt and the City, to occur on the earliest possible date. By written
9 correspondence dated July 11, 2017, a true and correct copy of which is attached hereto as
10 **Exhibit 14**, attorney Wood stated that she was “following up on our phone conversation of
11 earlier” and “has contacted the City’s Fire and building officials and advised them that I am
12 working with you to schedule a meeting next week to discuss, or at least begin discussing,
13 technical issues and other matters regarding moving this case forward.” Shortly thereafter, the
14 meeting was scheduled for, and occurred on, July 18, 2017.

15 42. At the meeting on July 18, 2017, it became clear that neither RA&A nor the City
16 had all the relevant information, and the City had not fully complied with Bennitt’s prior request
17 for copies of all submitted plans. Specifically, at that meeting, the City stated that the only “as
18 built” plans on file for the building were the 2014 Shell Plans (a copy of which the City failed to
19 previously include in its production to Bennitt). RA&A then showed City representatives a copy
20 of the 2014 TI Plans, which bore a stamp evidencing receipt by the City in 2014. Bennitt counsel
21 proposed that, to the extent the City was going to require the submission of any further plans,
22 such submission be done in stages. Specifically, Bennitt’s counsel proposed that Bennitt first
23 submit plans addressing the City’s concerns regarding any life-safety issues as to the entirety of
24 the southern portion of the building, along with plans submitted separately, on a rolling basis, for
25 each of the six (6) business suites in the southern portion of the building, with the northern
26 portion of the building (consisting of the theater, Casa Flores, and one other business suite), to be
27 submitted thereafter. The City stated that it would consider such a protocol, and the meeting was
28 concluded by the parties agreeing that they would copy, exchange, and review the set of plans

1 that each party did not yet have, and would then schedule a subsequent meeting to determine and
2 address whether any additional detail beyond the 2014 TI Plans would be required by the City to
3 allow the Bennitt Property to be re-occupied.

4 43. A subsequent meeting occurred between RA&A and City representatives on
5 July 27, 2017, at which time the parties exchanged additional information, including the City
6 providing RA&A with a copy of the 2014 Shell Plans. RA&A agreed to review the plans, conduct
7 a further inspection of the Bennitt Property to assess the “as built” conditions relative to those
8 plans, and schedule a further meeting with City representatives. On August 3, 2017, RA&A
9 conducted a further inspection of the Bennitt Property.

10 **F. The City Makes Clear That Bennitt Is to Do No Construction Work “Without First**
11 **Submitting Plans and Obtaining A Valid Building Permit.”**

12 44. By correspondence dated August 3, 2017, the City alleged that Bennitt was in
13 violation of the Order because, in part, the fire department discovered “contractors working doing
14 major construction,” all without “prior authorization” or a “legally required building permit.”
15 After Bennitt’s counsel explained the circumstances of the work (which was simply Bennitt
16 making minor repairs to a ceiling from damaged caused by one of the tenants when having to
17 immediately evacuate the Property), none of which required a permit, the City reiterated by
18 correspondence dated August 7, 2017, that “no construction work should be taking place at the
19 property without first submitting plans and obtaining a valid building permit from the City of
20 Stockton Building Department.” True and correct copies of these correspondences are
21 collectively attached hereto as **Exhibit 15**.

22 **G. On August 21, 2017, RA&A And the City Agree Upon A Protocol For The**
23 **Submission Of Further Plans**

24 45. At the request of RA&A, a meeting was scheduled for, and occurred on,
25 August 21, 2017, at which the City and RA&A came to an agreement with respect to a 3-step
26 protocol that Bennitt would follow: (1) An initial submittal would be presented to the City and
27 identify a scope of work to address life-safety components associated with the as-built conditions
28 of the southern portion of the building only, which would be submitted as a “shell improvement

1 package,” (2) specific tenant improvement permit submittals will be prepared for each of the eight
2 business suites separately, and (3) once the southern portion of the building (which contained six
3 of the eight business suites) was fully addressed, Bennett’s design professionals would proceed to
4 evaluate the northern portion of the building following similar protocol (the “Agreed Protocol”).

5 46. For many reasons, the Agreed Protocol made logical sense. First, the northern
6 and southern portions of the building are separated by what is known as a “Two-Hour Fire
7 Separation Wall,” which is a wall generally made of noncombustible materials to ensure that any
8 fire occurring on one side of the building does not spread to the other side. For all practical
9 purposes, the fire separation wall between the northern and southern portions of the building
10 essentially divides the building into two separate buildings. Thus, any “issues” alleged by the
11 City with respect to the northern portion of the building would not impact the southern portion,
12 especially considering that the theater (located in, and comprising the majority of the space of, the
13 northern portion of the building) has not been in use to the public since prior to the City’s Order.
14 Second, the southern portion of the building is newer than the northern portion, contains fire
15 sprinklers, and was the subject of significantly fewer issues in the City’s Order than the northern
16 portion. Because the southern portion contains six (6) of the eight (8) total business suites in the
17 entire building, focusing on the southern portion would be easier and more efficient, with the goal
18 of getting those suites occupied as soon as possible.

19 In the meantime, RA&A again inspected the Property on August 23, 2017, to obtain further
20 information for such drawings. By email correspondence dated August 29, 2017, RA&A
21 informed the City: “As discussed via telephone this afternoon, this email is to confirm that we
22 will be submitting the shell improvement plans for Suite 1 through 6 at 1825 Pacific Avenue,
23 Stockton at 10 am on Friday September 8th.”

24 **H. On September 5, The City Posts A “Legal Notice and Order to Repair or Abate”**
25 **With A “Compliance Completion Deadline” Of September 20, 2017**

26 47. Inexplicably, and again without any prior notice, the City posted a “Legal Notice
27 and Order to Repair or Abate” at the Property on September 5, 2017, setting forth a “Compliance
28 Completion Deadline” of September 20, 2017 (the “Notice”). Bennett’s counsel immediately

1 contacted and discussed the matter with attorney Wood, and confirmed the discussion in writing
2 by email dated September 6, 2017:

3 Thank you for taking my call today. As I mentioned, the City
4 posted at the property a "Legal Notice And Order To Repair Or
5 Abate" dated September 5, 2017, which states a "Compliance
6 Completion Deadline" of September 20, 2017. I inquired as to the
7 purpose of this "Notice" in light of the recent meetings between
8 City representatives and my client's design professionals.
9 Specifically, I understand that, at the most recent meeting on
10 August 21, 2017, the parties were able to reach an agreement that
11 includes the following:

- 12 • An initial submittal will be presented to the City and will
13 identify a scope of work to address life-safety components
14 associated with the as-built conditions of the southern portion of the
15 building only. This submittal will be treated as a "shell
16 improvement package." Subsequent to the August 21 meeting, my
17 client's architect has stated that this submittal will be made to the
18 City on September 8, 2017, which I understand is still on schedule
19 to occur;
- 20 • Specific tenant improvement permit submittals will be
21 prepared for each space separately; and
- 22 • Once the southern portion of the building is addressed, it is
23 anticipated that Avelar and Associates will proceed to evaluate the
24 northern portion of the building following similar protocol.

25 I inquired as to the purpose of the above-referenced 'Notice' in
26 light of the foregoing protocol agreed upon by the parties. You
27 stated that the 'Notice' is intended to preserve the City's rights so
28 that the City can proceed without further delay to make any
necessary repairs in the event that Mr. Bennett does not follow
through with the protocol set forth above. You stated that the City
is interested in ensuring that this matter proceeds expeditiously so
that the business suites can be re-occupied.

In short, it is my understanding that if my client and his design
professionals continue to move this matter forward expeditiously
and make progress in accordance with the protocol set forth above,
the City will refrain from taking any action under the "Notice," but
please confirm that my understanding is correct.

Attorney Wood responded by email of the same date, stating in part:

The Notice is a required precursor to the City proceeding with filing
an action and seeking the appointment of a Court Receiver. Should
such actions become necessary due to a failure by your client to
comply with its' requirements, the City can and will proceed
forward with pursuing all available remedies, including seeking the
appointment of a Court receiver to address all of the outstanding
code violations on the property.

1 By further email to attorney Wood dated September 6, 2017, Bennett's counsel inquired as
2 to the 15-day compliance deadline set forth in the Notice, and stated in part:

3 We have had several meetings with City representatives in an
4 attempt to agree on a protocol for addressing the City's concerns,
5 and our submission of plans this Friday will begin the plan check
6 process (which process will certainly take more than 15 days).

7 When you say that the Notice is necessary to 'prepare for filing' a
8 lawsuit for the appointment of a receiver, are you saying that such a
9 lawsuit will be filed even if my client proceeds in good faith with
10 the agreed-upon protocol, including the submission this Friday? In
11 other words, if the City does not intend to honor the agreed upon
12 protocol, please let me know now so I can advise my client
13 accordingly.

14 When no response to this email was provided, Bennett's counsel again sent an email to
15 attorney Wood on September 7, 2017, stating in part:

16 While such a notice might be appropriate when specific items in
17 need of repair have been specifically identified by the City, that is
18 not the case here. Rather, I understand that the City is requiring
19 that my client proceed with the submission of certain plans and go
20 through the plan-check process. In fact, the June 7, 2017, Notice to
21 Vacate, as well as the subsequent notice issued by the City on
22 August 3, 2017, prohibit my client from making any repairs
23 whatsoever that would otherwise require a permit.

24 In short, setting aside that 'the message' of the notice seems to
25 wholly disregard our agreed-upon plan for proceeding, as well as
26 the extensive work, discussions and collaboration over recent weeks
27 going through the plan-check process, the 15-day 'repair' period
28 under the notice is perplexing. Frankly, it seems the City is
attempting to create the public appearance that my client is delaying
simple 'repairs,' all while the City is simultaneously requiring that
my client proceed through a time consuming and largely redundant
plan-check process. Of course, my client would love to abbreviate
such a process and expedite this matter to the fullest extent so that
the business suites can be re-occupied. **If the City believes that
the 'repairs' at issue in the notice are capable of being made
within 15 days, and the business suites can thereby be
immediately re-occupied after such 15-day period, I assume the
City would be in agreement to spearhead such repairs at my
client's expense and return the property to my client 15 days
later in a state ready for occupancy, but please confirm.**
Otherwise, we optimistically look forward to tomorrow's submittal
and subsequent expedited plan check so that businesses may soon
resume operations at the property. [Emphasis added.]

1 By email correspondence also dated September 7, 2017, attorney Wood dodged the
2 critical questions posed by Bennett's counsel, and generally stated:

3 The City has consistently requested a set of certified as-built plans
4 for the building. Without the plans, there can be no intelligent
5 conversation about what work must be done at the building. Your
6 client has received very specific instructions from our building
7 official regarding submittal of those certified as-built plans and they
8 are looking forward to receiving them tomorrow.

7 True and correct copies of the Notice and the foregoing correspondences are collectively
8 attached hereto as **Exhibit 16**.

9 **I. Consistent With The Protocol, RA&A Submits The Plans On September 8, 2017**

10 Plaintiffs are informed and believe that consistent with the protocol, RA&A submitted the plans
11 on September 8, 2017, and received the City's plan-check comments on Friday, September 14,
12 2017. On September 22, 2017, RA&A spoke with City representatives to review a number of
13 their plan-check comments associated with those submittals. By written correspondence dated
14 October 2, 2017, RA&A informed the City: "I am following up a voicemail I left for you this
15 afternoon requesting a call to discuss our plan check response that we intend to submit by the end
16 of this week. Additional, I would like to confirm if you would be available to meet at the time of
17 re-submitting or if you prefer that we just drop off the package at the counter." RA&A then
18 modified and resubmitted those plans on October 6, 2017 and addressed the City's plan-check
19 comments after meeting that same day with City representatives. On or about October 11, 2017,
20 RA&A received the City's second round of plan-check comments and addressed those comments
21 in its third and final submission of plans on October 20, 2017.

22 **J. The City Serves Its 3-Day Notice Of Intent To File A Petition For Receivership On**
23 **October 17, 2017**

24 48. Plaintiffs are informed and believe that on October 17, 2017, by and through
25 S&W, the City posted at Bennett's office a "Notice of Intent to File Receivership
26 Petition/Complaint" dated October 11, 2017, pursuant to Health and Safety Code § 17980.7(c)
27 (the "3-Day Notice"). Bennett's counsel sent written correspondence that same day to attorney
28 Wood inquiring as to the 3-Day Notice, and stating in part:

1 I was informed today by my client that the attached letter from
2 attorney Amanda Pope was posted today (although the letter is
3 backdated to October 11, 2017) at my client's office. The letter
4 states that the City will be filing a petition for the appointment of a
5 receiver "to abate the substandard conditions" alleged to exist at my
6 client's property at 1825 Pacific Avenue. I'm rather perplexed, as I
7 understood that my client and the City have been moving forward
8 and making progress with respect to the City's concerns.

9 On August 23, 2017, my client's architect, Joe Garcia, met with
10 City representatives, including Lydia Clary, Phil Simon, John
11 Freitas and John Schweigert to further discuss the plan with respect
12 to the Suite 1 'tenant improvement' package and the "shell
13 improvement plan" for the southern portion of the property. On
14 September 8, 2017, as promised, Mr. Garcia submitted to the City
15 the tenant improvement package for Suite 1 and the 'shell
16 improvement plan' for the entire southern portion of the property.
17 On September 22, 2017, Mr. Garcia spoke with John Schweigert
18 and John Freitas to review a number of their plan check comments
19 associated those submittals. Mr. Garcia then re-submitted those
20 documents on October 6, 2017 and addressed the City's plan check
21 comments after meeting that same day with City representatives
22 Lydia Clary, John Freitas and John Schweigert. Mr. Garcia
23 recently received the City's second round of plan check comments
24 and will be addressing those shortly upon his return from vacation.

25 I do not know whether the attached letter is the result of
26 miscommunication between the City Attorney's office and the
27 City's building department, but please let me know if the City plans
28 to proceed with the petition referenced in the letter. Also, as I
requested previously, please ensure that I am copied on all
correspondence that is sent to my client or posted at the property or
at his office.

By further written correspondence of the same date to attorney Wood, Bennitt's counsel
stated:

To ensure that there were no delays while Mr. Garcia was on
vacation, I understand that he received approval from John
Swiegert last week to submit the documents with electronic
signature. I also understand that Mr. Garcia will therefore be
submitting the drawings by the end of this week. Since the City's
second round of plan check comments involved rather minor issues,
I anticipate that there will be no further issues with the submission
and that the permit will be issued promptly.

Attorney Amanda Pope of S&W responded by written correspondence dated October 19,
2017, stating in part:

As indicated in the notice, the City is proceeding with litigation
given the lack of progress and compliance on your client's property
due to the limited scope and slow pace of Mr. Bennitt's
rehabilitation efforts to date. The City is now protecting its rights

1 to proceed with a nuisance abatement action and advancing that
2 action as necessary until it is confident that all violations will be
thoroughly, properly, and expeditiously rehabilitated.

3 Bennitt's counsel responded to attorney Pope by detailed written correspondence dated
4 October 23, 2017, setting forth the history of the matter and the significant efforts made by
5 Bennitt, and further stating in relevant part:

6 We can agree to disagree as to the nature of the alleged violations,
7 but the plain fact is that the written preliminary report of our
8 licensed design professionals makes clear that the City's evacuation
9 tactic was "unnecessarily heavy-handed" and that, other than minor
10 issues, there were no life-safety issues that required the evacuation
11 of the property. Regardless, despite disagreement between City
12 representatives and our design professionals as to the nature, scope,
13 and extent of the issues, my office, my client, and our design
14 professionals have fully attempted to cooperate with the City. In
that regard, we have spent countless hours on this matter meeting
with City representatives, inspecting the property, and addressing
the City's concerns since the evacuation order was issued. We
agreed upon a protocol with the City, which was subsequently
documented through correspondence, and we have been diligently
following that protocol, which includes the various submissions
referenced in my prior correspondence to Ms. Alcala-Wood.

15 On September 5, 2017, the City gave its first indication that it was
16 abandoning the agreed-upon protocol when it issued a "Legal
17 Notice And Order To Repair Or Abate," which identified a
18 "Compliance Completion Deadline" of September 20, 2017. By
19 written correspondence to Ms. Alcala-Wood dated September 7,
20 2017, I reminded her that the June 7, 2017, Notice to Vacate, as
21 well as the subsequent notice issued by the City on August 3, 2017,
22 prohibit my client from making any repairs whatsoever that would
23 otherwise require a permit. I also stated in that correspondence:

24 'In short, setting aside that 'the message' of the notice seems to
25 wholly disregard our agreed-upon plan for proceeding, as well as
26 the extensive work, discussions and collaboration over recent weeks
27 going through the plan-check process, the 15-day 'repair' period
28 under the notice is perplexing. Frankly, it seems the City is
attempting to create the public appearance that my client is delaying
simple 'repairs,' all while the City is simultaneously requiring that
my client proceed through a time consuming and largely redundant
plan-check process. Of course, my client would love to abbreviate
such a process and expedite this matter to the fullest extent so that
the business suites can be re-occupied. If the City believes that the
'repairs' at issue in the notice are capable of being made within 15
days, and the business suites can thereby be immediately re-
occupied after such 15-day period, I assume the City would be in
agreement to spearhead such repairs at my client's expense and
return the property to my client 15 days later in a state ready for
occupancy, but please confirm. Otherwise, we optimistically look
forward to tomorrow's submittal and subsequent expedited plan

1 check so that businesses may soon resume operations at the
2 property.'

3 I have never received any confirmation that the City would be
4 willing to spearhead the repairs and return the property to my client
5 15 days later in a state ready for occupancy. In short, the City has
6 made clear in writing that my client is not allowed to do any work
7 requiring a permit until a permit is obtained, and we have been
8 doing everything reasonably possible to obtain the necessary
9 permits so that the work being required by the City can be
10 performed. Perhaps you or your client will explain to me what a
11 receiver would do that is not currently being done by my client and
12 his design professionals? If the City would give us guidance on
13 how it believes this matter should be handled, aside from my client
14 following the agreed-upon protocol as he has been doing, perhaps
15 we could all avoid costly and time-consuming litigation.

16
17 My client has no reason to prolong this process. He is losing in
18 excess of \$30,000 per month in rental income. Despite our belief
19 that the City's actions were unwarranted and that the City should be
20 liable for these damages, we made a conscious decision in June to
21 cooperate with the City, believing that such course would be more
22 efficient than litigation in getting the property re-occupied. It is
23 now clear that, much like the City issued its June 7 evacuation order
24 without notice to my client or the tenants after planning the tactic
25 for several months behind the scenes, the City strung my client
26 down a road without any intention of performing under the agreed-
27 protocol and is now changing course despite my client's diligence
28 and significant investment in this process.

17 Attorney Pope responded by correspondence dated October 24, 2017, thanking Bennett's
18 counsel for agreeing to accept service of the 3-Day Notice, but failing to address any of the
19 substantive issues and questions raised in the October 23, 2017, correspondence from Bennett's
20 counsel. True and correct copies of the 3-Day Notice and foregoing correspondences are
21 collectively attached hereto as **Exhibit 17**.

22 **K. On October 30, The City Approves the Plans, Informs RA&A The Permit Can Be**
23 **Picked Up, And Covertly Files Its Petition, All On The Same Day**

24 49. Plaintiffs are informed and believe that the City informed RA&A by written
25 correspondence dated October 30, 2017, a true and correct copy of which is attached hereto as
26 **Exhibit 18**: "The permits for the shell improvements (17-05937) and suite 1 tenant improvements
27 (17-05942) may be picked up at your convenience." That same day, however, the City covertly
28 filed a "Petition For Nuisance Abatement And Receivership" against Bennett, representing therein

1 that the "City has attempted to gain [Bennitt's] voluntary compliance to rehabilitate the Nuisance
2 Properties, to no avail," and that Bennitt "failed to abate the violations of law or take corrective
3 action."

4 **L. On November 3, 2017, The City Refuses To Release The Approved Permit To**
5 **Bennitt**

6 50. When Bennitt's licensed contractor attempted to retrieve the permit on November
7 3, 2017, and pay the required fees, the City informed him that it was now subject to a "litigation
8 hold" and would not be released, sending Bennitt's contractor away empty-handed. RA&A sent
9 written correspondence to the City on the same date, stating:

10 It is my understanding that Dave Olson of Olson Construction went
11 to pick up the permits today with all required forms, information
12 and payment (as listed below) as was told by Lydia that he would
13 not be able to secure the permit due to the fact that there was a
14 "Litigation Hold" on the file. Can you please clarify what this
15 "hold" means and why he is not unable to pick up the permits? We
16 are not aware of any additional requirements. After all the efforts
17 we have all collectively made to get this point, we certainly want to
18 make sure that the process continues in reasonable fashion. Please
19 advise.

20 On behalf of the City, attorney Amanda Pope of S&W responded to RA&A by email
21 correspondence dated November 6, 2017, stating:

22 Our firm represents the City of Stockton regarding the Empire
23 property and I am responding to the email you sent City staff
24 below. The City has filed a nuisance abatement action against the
25 Mr. Bennitt as owner of the property and I have already been in
26 contact with Mr. Vignolo as counsel for Mr. Bennitt. Both
27 gentlemen are copied on this email since they were originally
28 included by you in your email to staff.

29 The City is hopeful to resolve this matter without the need for
30 further litigation. However, to do so, the City needs you and Mr.
31 Bennitt to submit a comprehensive rehabilitation plan for the entire
32 property with a detailed breakdown of the scope of work addressing
33 all violations, and the corresponding deadline by which you commit
34 to have each line item in the scope of work completed. Due to the
35 extremely substandard and dangerous state of the property, and the
36 lack of diligent and expeditious rehabilitation efforts to date, the
37 City will not be issuing permits for any work on the property until it
38 has an enforceable commitment from Mr. Bennitt for complete and
39 expeditious rehabilitation of the entire property. To be clear,
40 negotiating any type of agreement with Mr. Bennitt would require a
41 rehab plan for the entire property. Until such an agreement is

1 reached, the City will proceed with its action to force the complete
2 and expeditious rehabilitation of the entire property through its
3 nuisance abatement litigation.

4 True and correct copies of these correspondences are collectively attached hereto as
5 **Exhibit 19.**

6 51. Between June 2017 through September 2017, Plaintiffs are informed that Bennitt
7 incurred in excess of \$98,000.00 in architectural and other design professional fees in response to
8 addressing the City's Order of June 7, 2017. Plaintiffs are informed and believe, that the City
9 knew that Bennitt was incurring significant design professional fees and, despite the utmost
10 diligence by RA&A in addressing the City's evacuation Order, and proceeding in compliance
11 with the Agreed Protocol, the City repudiated the Agreed Protocol in furtherance of unlawful and
12 improper motives. True and correct copies of the invoices from RA&A are collectively attached
13 hereto as **Exhibit 20.**

14 52. Bennitt is informed and believes, and on that basis alleges, that through the
15 November 6, 2017, response of attorney Amanda Pope, it is clear that the City repudiated the
16 Agreed Protocol and wants the entirety of the building (both the northern and southern portions)
17 addressed simultaneously and before the City will allow Bennitt to do any work pursuant to the
18 approved permits. Plaintiffs are informed and believe that, not only does this contradict the
19 Agreed Protocol and defy the logical reasons for which the City and Bennitt agreed on August 21,
20 2017, to divide the work between the northern and southern portions of the building, as set forth
21 above, but it will create significant delays and expense from the already time-consuming, largely
22 redundant, and expensive process the City has required of Bennitt. Plaintiffs are informed and
23 believe that there is no credible reason for the City to now withhold the permits that have been
24 approved for the southern portion of the building, as doing so will only bring this to a standstill
25 (and thereby prevent the approved and permitted work from commencing and being completed)
26 until the drawings requested by the City for the "entire" Property are submitted, processed, and
27 approved.
28

1 53. Plaintiffs are informed and believe that if the City was going to require something
2 additional or different than the Agreed Protocol, it should have said so in August 2017. Plaintiffs
3 are informed and believe that to the extent that Bennitt would then have been willing to follow
4 what the City is now requiring (as opposed to proceeding with litigation), RA&A could have
5 accomplished such work simultaneously with the work that RA&A has done thus far. Bennitt is
6 further informed and believes that, for RA&A to now begin to address the northern portion of the
7 building, as being required by the City, there will inevitably be an unnecessary and unexpected
8 delay of at least several months, all while work could be proceeding on the southern portion of
9 the building pursuant to the approved permits.

10 **FIRST CAUSE OF ACTION**

11 **(42 U.S.C. § 1983 - Violation of Procedural Due Process Against All Defendants)**

12 54. Plaintiffs reallege and incorporate by reference each and every allegation
13 contained in paragraphs 1 through 53, inclusive, as set forth above.

14 55. Plaintiffs are informed and believe, and on that basis allege, that in doing all of
15 the things herein mentioned, defendants, and each of them, acted under color of the statutes,
16 regulations, code, customs, and usages of the City of Stockton and the State of California.

17 56. The City issued the June 7, 2017, Order requiring the immediate evacuation of the
18 Bennitt Property on the purported basis that the condition of the Bennitt Property posed an
19 “immediate threat to the life, limb, health, safety, and welfare of the public at large and the
20 occupants of [the] Property.” In fact, as confirmed by the design professionals of RA&A, the
21 Bennitt Property did not pose such an “immediate threat” and, as demonstrated by the actions of
22 the City and other defendants, there was no emergency.

23 57. Plaintiffs are informed and believe, and on that basis allege, that the City and
24 other defendants evacuated, and threatened to evacuate, the Property without pre-deprivation
25 notice or hearing despite the fact that the City knew that no exigent circumstances warranted such
26 action or acted with reckless disregard of the actual circumstances. The City and other defendants
27 knew that no emergency existed, and merely stated that an emergency existed in order to further
28 other City policies. By these acts, the City and other defendants denied Bennitt procedural due

1 process. Bennitt is informed and believes, and on that basis allege, that the City's notices and
2 actions are
3 not based on health and safety but, instead, are part of the City's pre-textual scheme to retaliate
4 against Bennitt and in furtherance of other unlawful motives set forth herein.

5 58. Plaintiffs are informed and believe, and on that basis allege, that the City issued
6 the Order and evacuated the Bennitt Property pursuant to the "Uniform Code for the Abatement
7 of Dangerous Buildings" (previously identified as the "Code"), which the City adopted through
8 Section 15.28.010 of the City's Municipal Code, that the Code provides Bennitt with the right to
9 appeal such Order to the City's "Building and Housing Board of Appeals," that Bennitt timely
10 filed such appeal to the City's "Building and Housing Board of Appeals," and that, at the time of
11 issuance of the Order and at all times thereafter, the City had no "Building and Housing Board of
12 Appeals." Thus, Plaintiffs are informed and believe, and on that basis allege, that the City issued
13 the Order and took such action under the Code without any intention of affording Bennitt the due
14 process appeal rights required under the Code, and in fact knew at the time of taking such action
15 that it would not be able to afford Bennitt such rights.

16 59. Plaintiffs are informed and believe, and on that basis allege, that the City and other
17 defendants secretly planned their strategy over the course of at least several months prior to
18 issuing the evacuation Order on June 7, 2017, and had ample opportunity to notify Plaintiffs and
19 the tenants with an opportunity to be heard with respect to whether the alleged conditions of the
20 Property truly posed an "immediate threat" to life, but failed to do so.

21 60. Plaintiffs are informed and believe, and on that basis allege, that the City and
22 other defendants claim to have known of the existence of the alleged conditions giving rise to the
23 Order since at least 2012, and certainly knew of such alleged conditions as of the date of the
24 City's inspection on April 26, 2017. Plaintiffs are further informed and believe, and on that basis
25 allege, that, rather than provide such notice and opportunity to be heard during the months prior
26 to issuance of the Order, the City and other defendants utilized such time to covertly prepare for
27 the evacuation, including, but not limited to, gathering and preparing materials for the meeting to
28

1 be held on June 7, 2017, with the tenants of the Property and preparing a detailed release for a
2 press conference that afternoon.

3 61. Plaintiffs are informed and believe, and on that basis allege, that the City and
4 other defendants intentionally failed and refused to provide notice to Bennitt or the Plaintiffs
5 prior to issuance of the Order, despite ample time and opportunity to do so, because the City and
6 other defendants knew that such Order was unsubstantiated, the conditions of the Bennitt
7 Property did not pose any "emergency," and providing such prior notice could have and would
8 have thwarted the City's covert and unlawful plan through the ability of Bennitt and/or the
9 Plaintiffs to obtain injunctive relief or take other appropriate action prior to being evacuated from
10 the Bennitt Property.

11 62. Plaintiffs are informed and believe that the secret strategy and significant delay in
12 issuing the evacuation Order not only violates due process, but wholly undermines the contention
13 of the City and other defendants that any condition of the Property posed any "immediate threat"
14 to life or any "emergency" need to evacuate the Property.

15 63. The defendants, and each of them, in carrying out the above-described code
16 enforcement activities against Bennitt and Plaintiffs, and engaging in the above described
17 conduct, acted with reckless disregard of the actual circumstances and demonstrated a pattern of
18 abuse and arbitrary action, thereby depriving Bennitt of procedural due process as guaranteed by
19 the Fourteenth Amendment to the Constitution of the United States.

20 64. As a proximate result of the foregoing acts of the defendants, and each of them,
21 Plaintiffs have suffered and continue to suffer extreme hardship and damages, which damages
22 include, but are not limited to, violation of their constitutional rights, loss of income from the
23 forced and immediate shutting down of their business and source of their livelihoods, loss of their
24 long-standing good will in the local restaurant community. Plaintiffs are informed and believe,
25 and on that basis allege, that they have incurred and continues to incur substantial damages
26 according to proof at trial.

27 65. None of the defendants is entitled to immunity for their acts as they were not
28 acting in a legislative capacity when they engaged in the aforementioned actions. As such, they

1 are personally liable for damages resulting from decisions where they knew, or should have
2 known, that they were violating Plaintiffs' constitutional and/or statutory rights.

3 66. As a result of the City's conduct as set forth above, Plaintiffs have been compelled
4 to retain legal counsel to prosecute this action and has incurred and will continue to incur
5 attorneys' fees and costs. Pursuant to 42 U.S.C. § 1988, Plaintiffs are entitled to recover
6 attorneys' fees from the City.

7 SECOND CAUSE OF ACTION

8 **(42 U.S.C. § 1983 - Violation of Equal Protection Against All Defendants)**

9 67. Plaintiffs reallege and incorporate by reference each and every allegation
10 contained in paragraph 1 through 66, inclusive, as set forth above.

11 68. Plaintiffs are informed and believes, and on that basis allege, that in doing all of
12 the things herein mentioned, defendants, and each of them, acted under color of the statutes,
13 regulations, code, customs, and usages of the City of Stockton and the State of California.

14 69. Plaintiffs are informed and believe, and on that basis allege, that the actions of the
15 defendants, and each of them, as described above, were and are in violation of Plaintiffs' rights to
16 equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution of
17 the United States in that the actions taken by the City at the Property were not directed at or
18 carried out as to other similarly situated properties in the City.

19 70. Plaintiffs are informed and believe, and on that basis allege, that the City and
20 other defendants targeted the Property for over-enforcement and evacuation, repudiated the
21 Agreed Protocol after Bennitt and RA&A had diligently performed thereunder, and ultimately
22 approved, but refused to issue, the requested permit and precluded Bennitt from doing the work
23 required by the City, all in furtherance of a covert and unlawful plan, a motive to retaliate against
24 Bennitt and by extension, Plaintiffs, and with no desire or intent to actually "rehabilitate" the
25 Property or allow Bennitt or Plaintiffs to do so. Plaintiffs are informed and believe, and on that
26 basis allege, that through this covert and unlawful plan, the City and other defendants
27 manufactured a pre-textual "emergency" basis to require the immediate evacuation of the
28 Property, knowing that such a course of action would immediately eliminate Bennitt's income

1 stream from the Bennitt Property, diminish the value of such property, and attract widespread
2 media attention, all of which the City and other defendants could utilize in painting Plaintiffs and
3 Bennitt in a false public light and ultimately leveraging Bennitt to sell the Property to a buyer
4 preferred by the City. In so doing, the City and other defendants created an irrational distinction
5 between the Property, which the City required to be evacuated without affording due process and
6 in the absence of any conditions posing an "immediate threat" to life, and other commercial
7 properties within the City that do pose an "immediate threat" to life and are not the subject of
8 evacuation or similar enforcement measures. That distinction lacks any rational basis and the
9 conduct of the City and other defendants constitutes a violation of Plaintiffs' rights, under the
10 equal protection clause of the United States Constitution.

11 71. The defendants, and each of them, in carrying out the above-described code
12 enforcement and evacuation against the Property and engaging in the above described conduct,
13 acted with reckless disregard of the actual circumstances and demonstrated a pattern of abuse and
14 arbitrary action, all in violation of Plaintiffs' rights, or the Tenants to equal protection of the laws
15 as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

16 72. As a proximate result of the foregoing acts of the defendants, and each of them,
17 Plaintiffs have suffered and continues to suffer extreme hardship and damages, which damages
18 include, but are not limited to, violation of their constitutional rights, a loss of income and profits
19 from the __forced and immediate__ shut down of their businesses, loss of investment in their
20 businesses, and loss of standing in the business community. Plaintiffs are informed and believe,
21 and on that basis allege, that they have incurred and continue to incur substantial damages
22 according to proof at trial.

23 73. None of the defendants is entitled to immunity for their acts as they were not
24 acting in a legislative capacity when they engaged in the aforementioned actions. As such, they
25 are personally liable for damages resulting from decisions where they knew, or should have
26 known, that they were violating Plaintiffs' constitutional and/or statutory rights, loss of income
27 from the forced and immediate shutting down of their business and source of their livelihoods,
28 and loss of their long-standing good will in the local restaurant community.

74. As a result of the City's conduct as set forth above, Plaintiffs have been compelled to retain legal counsel to prosecute this action and has incurred and will continue to incur attorneys' fees and costs. Pursuant to 42 U.S.C., section 1988, Plaintiffs are entitled to recover attorneys' fees from the City.

THIRD CAUSE OF ACTION

(42 U.S.C. § 1983 - Violation of the Fourth Amendment Against All Defendants)

75. Plaintiffs reallege and incorporate by reference each and every allegation contained in paragraphs 1 through 74, inclusive, as set forth above.

76. Plaintiffs are informed and believe, and on that basis allege, that in doing all of the things herein mentioned, defendants, and each of them, acted under color of the statutes, regulations, code, customs, and usages of the City of Stockton and the State of California.

77. Plaintiffs are informed and believe, and on that basis allege, that the defendants, and each of them, targeted the Property for over-enforcement and evacuation, repudiated the Agreed Protocol after Bennitt and RA&A had diligently performed thereunder, and ultimately approved, but refused to issue, the requested permit and precluded Bennitt from doing the work required by the City, all in furtherance of a covert and unlawful plan, a motive to retaliate against Bennitt and, necessarily, Plaintiffs and with no desire or intent to actually “rehabilitate” the Property or allow Bennitt to do so. Plaintiffs are informed and believe, and on that basis allege, that through this covert and unlawful plan, the City and other defendants manufactured a pre-textual “emergency” basis to require the immediate evacuation of the Bennitt Property, knowing that such a course of action would immediately cause Plaintiffs’ businesses to be shut down forever. Although the defendants, and each of them, invoked the emergency provisions of the Code in requiring the evacuation of the Property, the defendants’ true purpose, as confirmed by the facts evidencing the delay of the City and other defendants in taking such evacuation measure, as well as the opinion of RA&A design professionals, had nothing to do with any “emergency” life-safety issue or any “immediate threat” to life. Accordingly, the defendant’s actions were unreasonable and without justification, subjecting Plaintiffs to unnecessary and substantial harm.

1 78. Plaintiffs are informed and believe, and on that basis allege, that the defendants,
2 and each of them, by creating pre-textual violations of the City's code in order to interfere with
3 Plaintiffs' and Bennett's interests in the Property for purposes other than immediate threats to
4 health and safety, deprived Plaintiffs of their rights to be free from unlawful seizures, all in
5 violation of the Fourth Amendment to the Constitution of the United States.

6 79. The defendants, and each of them, in carrying out the above-described evacuation
7 and code enforcement against the Property and engaging in the above described conduct, acted
8 with reckless disregard of the actual circumstances and demonstrated a pattern of abuse and
9 arbitrary action, all in violation of Plaintiffs' rights to be free from unreasonable and unlawful
10 seizures as guaranteed by the Fourth Amendment to the Constitution of the United States.

11 80. As a proximate result of the foregoing acts of the defendants, and each of them,
12 Plaintiffs have suffered and continue to suffer extreme hardship and damages, which damages
13 include, but are not limited to, violations of their constitutional rights, loss of income from the
14 forced and immediate shutting down of their business and source of their livelihoods and loss of
15 their long-standing good will in the local restaurant community. Plaintiffs are informed and
16 believe, and on that basis allege, that they have incurred and continue to incur substantial
17 damages according to proof at trial.

18 81. None of the defendants is entitled to immunity for their acts as they were not
19 acting in a legislative capacity when they engaged in the aforementioned actions. As such, they
20 are personally liable for damages resulting from decisions where they knew, or should have
21 known, that they were violating Plaintiffs' constitutional and/or statutory rights.

22 82. As a result of the City's conduct as set forth above, Plaintiffs have been compelled
23 to retain legal counsel to prosecute this action and have incurred and will continue to incur
24 attorneys' fees and costs. Pursuant to 42 U.S.C. § 1988, Plaintiffs are entitled to recover
25 attorneys' fees from the City.

FOURTH CAUSE OF ACTION

**(42 U.S.C. § 1983 - Violation of the Fifth Amendment
and Cal. Const. Art. I, § 19 Against All Defendants)**

83. Plaintiffs reallege and incorporate by reference each and every allegation contained in paragraph 1 through 82, inclusive, as set forth above.

84. Plaintiffs are informed and believe, and on that basis allege, that in doing all of the things herein mentioned, defendants, and each of them, acted under color of the statutes, regulations, code, customs, and usages of the City of Stockton and the State of California.

85. Plaintiffs are informed and believe, and on that basis allege, that the defendants, and each of them, targeted the Property for over-enforcement and evacuation, repudiated the Agreed Protocol after Bennitt and RA&A had diligently performed thereunder, and ultimately approved, but refused to issue, the requested permit and precluded Bennitt and Plaintiffs from doing the work required by the City, all in furtherance of a covert and unlawful plan, a motive to retaliate against Bennitt and necessarily Plaintiffs, and with no desire or intent to actually "rehabilitate" the Property or allow Bennitt or Plaintiffs to do so. Plaintiffs are informed and believe, and on that basis allege, that through this covert and unlawful plan, the City and other defendants manufactured a pre-textual "emergency" basis to require the immediate evacuation of the Property, knowing that such a course of action would immediately force Plaintiffs to close their business, and attract widespread media attention, all of which the City and other defendants could utilize in painting Plaintiffs and Bennitt in a false public light and ultimately leveraging Bennitt to sell the Property to a buyer preferred by the City. Although the defendants, and each of them, invoked the emergency provisions of the Code, the defendants' true purpose, as confirmed by the facts evidencing the delay of the City and other defendants in taking such evacuation measure, as well as the opinion of RA&A design professionals, had nothing to do with any "emergency" life-safety issue or any "immediate threat" to life. Accordingly, the defendant's actions were unreasonable and without justification, subjecting Bennitt to an unlawful taking of his property.

1 86. To the extent that the conduct of the City was in furtherance of a public use, the
2 City violated Plaintiffs' rights and Bennitt's rights, by failing to pay just compensation pursuant
3 to the Fifth Amendment, which is applicable to the City under the Fourteenth Amendment to the
4 United States Constitution. To the extent that the conduct of the City and other defendants was in
5 furtherance of a private use, the City and other defendants violated Plaintiffs' rights and Bennitt's
6 rights under the Fifth Amendment, which wholly prohibits a taking of private property for a
7 private use. The City has not paid any compensation to Plaintiffs or Bennitt as a result of the
8 actions set forth above.

9 87. As a proximate result of the foregoing acts of the defendants, and each of them,
10 Plaintiffs have suffered and continues to suffer extreme hardship and damages, which damages
11 include, but are not limited to, violation of their constitutional rights, loss of income from the
12 forced and immediate shutting down of their business and source of their livelihoods, loss of their
13 long-standing good will in the local restaurant community. Plaintiffs are informed and believe,
14 and on that basis allege, that they have incurred and continue to incur substantial damages
15 according to proof at trial.

16 88. None of the defendants is entitled to immunity for their acts as they were not
17 acting in a legislative capacity when they engaged in the aforementioned actions. As such, they
18 are personally liable for damages resulting from decisions where they knew, or should have
19 known, that they were violating Plaintiffs' constitutional and/or statutory rights.

20 89. In addition, to Plaintiffs' damages, Plaintiffs have further incurred and/or will
21 incur attorneys' fees, appraisal fees, consulting fees, and other fees and costs because of this
22 proceeding, which are recoverable pursuant to Code of Civil Procedure section 1036.

23 24 **FIFTH CAUSE OF ACTION**

25 **(Declaratory Relief – Order Against All Defendants)**

26 90. Plaintiffs reallege and incorporate by reference each and every allegation
27 contained in paragraph 1 through 89, inclusive, as set forth above.
28

1 91. An actual controversy exists between the parties with respect to the City's Order to
2 evacuate the Property. Plaintiffs contend that the Order is invalid, void, and otherwise
3 unenforceable, whereas the City contends the Order is valid and has been, and continues to,
4 enforce the Order.

5 92. Plaintiffs desire a judicial determination of the validity of the evacuation Order, as
6 well as any fines or penalties being assessed pursuant thereto. Such a declaration is necessary and
7 appropriate to determine the parties' rights and obligations with respect to the Property.

8 **SIXTH CAUSE OF ACTION**

9 **(Declaratory Relief - Notice Against All Defendants)**

10 93. Plaintiffs reallege and incorporate by reference each and every allegation
11 contained in paragraph 1 through 92, inclusive, as set forth above

12 94. An actual controversy exists between the parties with respect to the City's Notice
13 to abate the Property. Plaintiffs contend that the Notice is invalid, void, and otherwise
14 unenforceable, whereas the City contends the Notice is valid and has been, and continues to,
15 enforce the Order.

16 95. Plaintiffs desire a judicial determination of the validity of the Notice, as well as
17 any fines or penalties being assessed pursuant thereto. Such a declaration is necessary and
18 appropriate to determine the parties' rights and obligations with respect to the Property.

19
20 **SEVENTH CAUSE OF ACTION**

21 **(Declaratory Relief – Building Permit Against All Defendants)**

22 96. Plaintiffs reallege and incorporate by reference each and every allegation
23 contained in paragraph 1 through 95, inclusive, as set forth above

24 97. An actual controversy exists between the parties with respect to the building
25 permit for the Property. Plaintiffs contend that there is not valid reason for the City's refusal to
26 issue the building permit, whereas the City contends it may withhold the permit while the parties
27 are in litigation.

1 98. Plaintiff desire a judicial determination of the legality of withholding the building
2 permit. Such a declaration is necessary and appropriate to determine the parties' rights and
3 obligations with respect to the building permit.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, – Plaintiffs pray for judgment as follows:

6 1. For a temporary restraining order, preliminary injunction, and permanent
7 injunction:

- 8 (a) Preventing the City from enforcing its evacuation Order with respect to the
9 Property, and otherwise allowing the re-occupancy and operation of the
10 Property;
11 (b) Precluding the City from refusing to allow Plaintiffs or Bennitt to do the
12 work pursuant to the Agreed Protocol; and
13 (c) Precluding the City from continuing its actions against the occupancy and
14 operation of the Property and precluding the City from taking any further
15 action against the occupancy and operation of the Property in the absence
16 of compliance with Plaintiffs' due process rights.

17
18 2. For an order declaring:

- 19 (a) The evacuation Order invalid, void, and otherwise unenforceable;
20 (b) The Notice to abate void, and otherwise unenforceable;
21 (c) Any fines or penalties assessed by the City against the Property, Plaintiffs
22 or Bennitt invalid, void, or otherwise unenforceable; and
23 (d) The refusal to issue the building permit is unlawful.

24 3. For an order cancelling the evacuation Order and Notice to abate the Property;

25 4. For damages sustained by Plaintiffs with respect to the Property according to
26 proof at trial;

27 5. For attorneys' fees pursuant to 42 U.S.C. § 1988 and as authorized by California
28 law;

EXHIBIT 1

April 18, 2006

TO: MAYOR AND CITY COUNCIL

FROM: RICHARD E. NOSKY, Jr., City Attorney

RE: SETTLEMENT OF LAWSUITS: FRANK A. PORTALE V. CITY OF STOCKTON (SAN JOAQUIN COUNTY SUPERIOR COURT CASE NO. CV020363, PORTALE V. CITY OF STOCKTON, ET.AL. (USDC CASE NO. CIV.S-02-0988 LKK JFM), CITY OF STOCKTON V. PORTALE, ET AL., SAN JOAQUIN SUPERIOR CT. CASE NO. CV018970

RECOMMENDATION

It is recommended that the City Council adopt a resolution approving a Release and Settlement Agreement for settlement of the above captioned lawsuits in the amount of \$1,572,750, including interest.

SUMMARY

This action will authorize settlement of three cases which stemmed from code enforcement actions that resulted in the closure of the Land Hotel in January 2002 and subsequent eminent domain action brought by the City.

DISCUSSION

On March 28, 2006, the City Council met in closed session and authorized settlement of the following cases, pending negotiation of a final settlement agreement:

Portale v. City of Stockton, et.al.

(USDC No. CIV.S-02-0988 LKK JFM)

Federal Civil Rights action seeking damages for the City's CHAT code enforcement actions that resulted in the closure of the Land Hotel in January 2002 and for subsequent actions that kept the hotel closed.

City of Stockton v. Portale, et al.

(San Joaquin Superior Court Case No. CV 018970)

State Court eminent domain action filed by the City to acquire the Land Hotel by eminent domain.

April 18, 2006

SETTLEMENT OF LAWSUITS: FRANK A. PORTALE V. CITY OF STOCKTON (SAN JOAQUIN COUNTY SUPERIOR COURT CASE NO. CV020363, PORTALE V. CITY OF STOCKTON, ET.AL. (USDC CASE NO. CIV.S-02-0988 LKK JFM), CITY OF STOCKTON V. PORTALE, ET AL., SAN JOAQUIN SUPERIOR CT. CASE NO. CV018970

Page Page 2 of 2

Frank A. Portale v. City of Stockton

(San Joaquin County Superior Court Case No. CV020363)

State Court writ action in which Portale is seeking to overturn hearing officer determination that Portale owed the City reimbursement of relocation costs the City incurred in when the Land Hotel was vacated in January 2002.

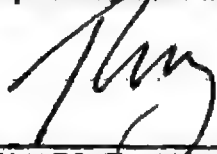
FINANCIAL SUMMARY

City shall pay to Dr. Portale the sum of \$1,487,150.00, which will be paid in four installments and incorporate interest of five percent (5%) accruing from April 18, 2006, as follows:

\$ 229,000 on execution of settlement agreement;
\$ 283,750 on July 1, 2006;
\$ 530,000 on July 1, 2007; and
\$ 530,000 on July 1, 2008.
\$1,572,750. Total payment including interest

The first payment of \$229,000 will be made using the release of deposit funds currently held by the State Condemnation Fund. Sufficient funds are available and will be budgeted in Central Parking District CIP-Other Enterprises Parking Lots Account No. 417-7903-670 to accommodate the payment schedule.

Respectfully submitted,



RICHARD E. NOSKY, JR.
CITY ATTORNEY

EXHIBIT 2

0028

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

---000---

FRANK A. PORTALE, AS TRUSTEE OF
THE PORTALE FAMILY REVOCABLE TRUST,
DATED OCTOBER 29, 1991,

Plaintiffs,

vs.

No. CIV S-02-0988
LKK/JFM

CITY OF STOCKTON; GARY PODESTO;
MARK LEWIS; STEVEN PINKERTON;
STEVEN "CHUCK" LAMAR; and DOES 1
through 10,

Defendants.

CONTINUATION OF THE DEPOSITION OF

JOHN LEWIS CARLSON

FRIDAY, MARCH 21, 2003

NOTICING ATTORNEY: WILLIAM R. WARNE

REPORTED BY: DEBRA B. THOMPSON, CSR NO. 9388

APPEARANCES

For the Plaintiffs:

DOWNEY BRAND LLP
BY: WILLIAM R. WARNE, ESQ.
555 Capitol Mall, 10th Floor
Sacramento, California 95814-4686
(916) 444-1000

For the Defendants City of Stockton, et al.:

GOLDFARB & LIPMAN
BY: EMILY B. LONGFELLOW, ESQ.
City Center Plaza
1300 Clay Street, Ninth Floor
Oakland, California 94612
(510) 836-6336

ALSO PRESENT:

NICK SHELLEY VIDEO
BY: NICK SHELLEY, VIDEO OPERATOR
3028 U Street

9 could make the rules up as it went; do you recall saying
10 that?

11 A. Yeah.

12 Q. What did you mean by that?

13 A. Well, basically there were meetings held and I sat
14 in on one of them, it was held in Steve Pinkerton's
15 conference room, it was right after or right before this
16 whole thing got started in terms of -- I think the City
17 attorney's office called the meeting and the -- Richard
18 Denhalter was there. I can't remember if anybody else
19 from the attorney's office was there. Steve was there, he
20 may have had a staff person, I think Dale Himes and I were
21 there, and there could have been some other people, and it
22 was basically Richard saying, hey, here's where the
23 manager and the Mayor want to go, how are we going to get
24 there, what rules are we going to make. So we kind of had
25 a discussion back and forth and didn't really come to a
26 conclusion, but after that, the manager had meetings could
27 be every ten days, every two weeks, where various staff
28 people got together and talked about either in general or

0106
1 specific what rules were going to be followed to achieve
2 the end.

3 Now, I was invited, but after that first meeting, I
4 didn't want anything to do with the thing, so basically I
5 would have anyway had other staff people go, but I did not
6 go, so I don't know what transpired other than I would
7 hear back the moaning and groaning and complaining from my
8 staff people that went like they couldn't believe what was
9 going on.

10 Q. Is it your opinion that the City singled out
11 certain hotels within its jurisdiction to apply this code
12 enforcement procedure to so as to eventually obtain
13 control of those hotels?

14 A. Yes, they actually had a list.

15 Q. The City comprised a list of hotels that they
16 targeted for purposes of applying this code enforcement
17 regime?

18 A. Yes, Steve Pinkerton, you know, his department was
19 responsible for that list.

20 Q. Okay. Certain hotels were on the list and certain
21 hotels were not on the list, correct?

22 A. That, I don't know. I don't know if some were on
23 and some were off. There was a list.

24 Q. There was a list?

25 A. There was a list.

26 Q. And that list was comprised by Mr. Pinkerton?

27 A. And probably others, I'm sure the manager had
28 input.

0107
1 Q. okay. And did you ever see that list?

2 A. Yes.

3 Q. Did you have an understanding that, for instance,
4 the land hotel was on that list?

5 A. Unfortunately, I don't know any of the hotels that
6 were on there.

7 Q. Okay. But it was your understanding that the City
8 comprised a list of hotels that would be subject to this
9 code enforcement regime, correct?

10 A. Yes.

11 Q. Did the City refer to this regime as aggressive
12 code enforcement?

13 A. I don't know if they referred to it specifically as

19 property owner can't achieve code enforcement compliance
 20 and you're causing displacement of tenants, which means
 21 that the property owner does not have income to either pay
 22 the mortgage or pay for the code enforcement compliance
 23 issues, at the same time you come along and say I'll give
 24 you so much money for your property, you've decreased the
 25 value of that property through that code enforcement
 26 effort and you're basically forcing that property owner
 27 because now he or she has no money in which to -- because
 28 they're thinking, you know, okay, if I make compliance,

0110

1 I'm okay, but that isn't the goal so you -- what's the
 2 term? Well, you've got them in a very unfortunate
 3 position and basically many of them couldn't afford it and
 4 so they had to sell, probably sold it at a distressed sale
 5 price because the City's going to come in and low-ball
 6 them.

7 Q. Can you name for me, sir, a very prestigious hotel
 8 in town, a very -- do you have a Marriotts down here, do
 9 you have a Hilton?

10 A. We used to have a Hilton down here, but now it's
 11 the Raddison.

12 Q. Okay. Was the City, in your mind, applying these
 13 same code enforcement procedures against the Raddison?

14 A. NO. NO.

15 Q. Why not?

16 A. Because again -- there was one aspect that they
 17 were, the City has a requirement to get an annual permit
 18 to operate, and that applied to all the hotels city-wide,
 19 but in the case of the Raddison, you didn't have, one, the
 20 goal of acquisition and control of that property; but,
 21 two, it also wasn't slum and blight, if you will, it
 22 didn't have, you know, lots and lots of code violations.

23 Q. Right. I understand, but is it fair to say that a
 24 meticulous code enforcer could go to the Raddison and find
 25 some codes that had been violated?

26 A. I'm absolutely sure you could find something. You
 27 can always find something.

28 Q. Right. You can always find something with respect

0111

1 to any hotel; isn't that correct?

2 A. That's absolutely right.

3 Q. All right. But was it your belief, sir, that the
 4 City was selectively targeting certain hotels to impose
 5 this code enforcement regiment throughout the city?

6 A. Yes, that's the list.

7 Q. Okay.

8 A. And there were -- I had mentioned that the
 9 department heads got together 10:00 o'clock Monday
 10 mornings. When the City launched off on this effort, the
 11 city manager would ask for a status report of the hotels.
 12 I mean, he loved asking for the status report, he'd say,
 13 you know, make my day, where are we on this -- on the code
 14 enforcement of these hotels. And then Mr. Pinkerton
 15 usually would respond and say, you know, he'd have that
 16 list and, okay, here's the list and the hotels were in
 17 this status and this hotel were in this status and this
 18 hotel were wherever we are.

19 Q. And how frequently -- and that was the Mayor -- or
 20 I'm sorry the --

21 A. The City manager's weekly meeting with department
 22 heads 10:00 o'clock on Mondays.

23 Q. And he would say make my day?

24 A. Yep.
 25 Q. And how could a department head make his day
 26 regarding code enforcement?
 27 A. By making sure that things were moving very fast to
 28 achieve the goal of basically finding all kinds of

0112
 1 violations, issuing certain orders to vacate the structure
 2 and/or coming along and offering to buy the property at a
 3 cheap price.

4 Q. Now, what if -- what was your understanding of how
 5 Mr. Lewis would respond in that meeting if a notice of
 6 violation was issued, for instance, and it was addressed
 7 and fixed?

8 A. They didn't -- we didn't get to that level of
 9 discussion or detail at the department head meetings, but
 10 there were other meetings that the manager was having that
 11 I had mentioned that I didn't go to where those kinds of
 12 detailed discussions would go on.

13 Q. And did you have a sense of what took place in
 14 those discussions through --

15 A. Staff would report back, but at that point, I sort
 16 of just closed my mind to it. I didn't get into any of
 17 the particulars.

18 Q. All right. Did you develop the understanding that
 19 it didn't matter if a hotel owner addressed a particular
 20 violation, that the City would find another one?

21 A. Yes. They would find some way to achieve the end.
 22 And different hotels and different property owners were
 23 treated differently, again, the end was the City wants
 24 control.

25 Q. Okay. But they weren't, for instance, imposing
 26 this goal on the Raddison, correct?

27 A. Not to my knowledge.

28 Q. Okay. If it wasn't on the list, it wasn't -- it

0113
 1 wasn't being affected by this campaign, correct?

2 A. Correct.

3 (Pause in proceedings.)

4 THE WITNESS: Could we take a potty break while
 5 you're sorting through your papers there?

6 MR. WARNE: We absolutely can.

7 THE VIDEO OPERATOR: Off the record at 11:26.

8 (Break from 11:26 a.m. to 11:34 a.m.)

9 THE VIDEO OPERATOR: Back on 11:34.

10 MR. WARNE: Can I have the last question and answer
 11 read back, please?

12 (Record read.)

13 Q. MR. WARNE: Okay. Sir, do you have a sense of what
 14 types of hotels would make it on this list? Let me help
 15 you, I've heard the phrase SRO, do you understand what
 16 that means?

17 A. Single room occupancy.

18 Q. All right. Was there discussion within your
 19 department meetings with Mr. Lewis about single room
 20 occupancy hotels or SRO hotels?

21 A. You know, Bill, I don't know, but that would be a
 22 category obviously, SRO's, generally older hotels
 23 centrally located in downtown, older -- older, I said that
 24 already, older units that basically had known code
 25 enforcement violations.

26 Q. were there any hotels that fit within the
 27 categories you just mentioned that, if you know, received
 28 special treatment from the city manager?

0114

1 A. I don't know.
 2 Q. Do you know if the City was in discussions at the
 3 time this code enforcement campaign was being waged
 4 against these hotels, do you know if the City was in
 5 discussion with any developers regarding the developers'
 6 desire or the City's desire that the developer develop
 7 these lots?
 8 A. No, I don't know that.
 9 Q. Okay. Were you a participant in any discussions
 10 regarding the need for more parking downtown?
 11 A. Yes.
 12 Q. What do you know about that? Or, I'm sorry, what
 13 discussions were you involved in?
 14 A. There were -- and, again, I can't be specific
 15 because I can't remember exactly, but there was just a
 16 general acknowledgment that there was a parking deficiency
 17 in downtown. There was HRD, I believe they had a parking
 18 study done and there is a document around and it may have
 19 identified sites for acquisition, or possible, you know,
 20 sites. And the City is in the processes of creating
 21 additional parking, the new parking structure and down
 22 towards the courthouse they demolished some structures and
 23 created at least surface parking, so there was no secret
 24 about the City's desire vis a vis the business people and
 25 commercial tenants downtown to produce and have more
 26 parking available.
 27 Q. Were those lots that were being created by the
 28 demolition of these hotels the lots that you spoke about

0115

1 earlier that the City wanted to have in inventory for the
 2 next up-cycle in the real estate market?
 3 A. That, I don't know.
 4 Q. Okay. One way or the other, you don't know?
 5 A. One way or the other, I don't know. Steve
 6 Pinkerton would probably be able to address that question.
 7 Q. All right. Do you recall anything else
 8 specifically about any discussions you had within the City
 9 regarding the ostensible need for downtown parking as a
 10 justification for knocking these hotels down?
 11 A. No.
 12 Q. Were you a participant in any discussions that went
 13 to the general question of why it was allegedly beneficial
 14 to the City to force these hotels out of business?
 15 A. No.
 16 Q. Okay. Did you perceive the code enforcement
 17 campaign -- because I think I got ahead of myself in the
 18 last question.
 19 Did you perceive the code enforcement campaign we
 20 talked about ten or fifteen minutes ago as a campaign that
 21 was designed to force these hotels out of business?
 22 A. Yes.
 23 Q. And force these hotel owners to come to the table
 24 for purposes of the City buying these hotels on the cheap?
 25 A. Yes.
 26 Q. Okay. Do you recall any discussions whatsoever
 27 with Mr. Lewis or any other department heads as to why
 28 someone in the City saw that as a benefit to the City or

0116

1 if in fact they did?
 2 A. The benefit being?
 3 Q. Are you aware of whatever the benefit would be? It
 4 may be self-evident, it may not be, but I'm just asking

EXHIBIT 6

Recording Requested By:

CITY OF STOCKTON

Return To:

**City of Stockton Neighborhood Services
22 E. Weber Avenue, 3rd Floor
Stockton, CA 95202**

APN 137-020-42

Subject: 1825 Pacific Avenue, Stockton, California

**AGREEMENT
Between the
CITY OF STOCKTON and Christopher J. Bennitt**

THIS AGREEMENT is entered into this 19th day of August, 2016, by and between the CITY OF STOCKTON, a municipal corporation organized under the laws of the state of California (hereinafter referred to as "CITY"), and, Christopher J. Bennitt (hereinafter referred to as "OWNER").

RECITALS

WHEREAS, OWNER is the owner of the real property located at 1825 Pacific Avenue, Stockton, California, Parcel Number 137-020-42 (the "Property").

WHEREAS, the CITY is the agency responsible for providing plan checks, building permits, and inspections for the area of Stockton in which the Property is located;

WHEREAS, the CITY has given to OWNER a Notice and Order to Vacate, dated January 31, 2012; Administrative Citations FY#02173, dated January 31, 2012 and #100683, dated December 29, 2013 a Civil Penalty Notice and Order, dated February 06, 2014 and issued for work which the CITY claims require building permits and/or removal of structures on the property located at 1825 Pacific Avenue, Stockton, California;

WHEREAS, OWNER disputes CITY's claims, and

WHEREAS, OWNER and CITY now wish to enter into this Agreement to resolve any and all disagreements OWNER and CITY have regarding the Property.

IN CONSIDERATION OF the faithful performance of the terms, conditions, and promises set forth in this Agreement, the parties agree as follows:

1. OWNER agrees to have a set of plans prepared by architect and/or engineers which will identify the current as built condition of the Property and will identify the uses of each portion of the Property as now in use and will identify, as the scope of work, all construction, removal, modification, and/or completion of work on the Property being proposed by OWNER (the "Plans".)
2. CITY agrees that the Plans may be "plan checked" by (to be determined) as an agent of the CITY.
3. Following the "plan check" performed by (to be determined), and following any required revisions to the submitted plans being completed by owner, and following the submittal of the plans following plan check together with the required statement from the third party plan check firm (See Exhibit 1), CITY agrees to issue necessary Building Permit(s) ("Permit") to OWNER allowing the completion of all construction set forth in the Plans.
4. OWNER agrees to pay the fees and costs for preparation of the plans and specifications to be submitted for plan check and OWNER agrees to pay the fees and costs of the third party (to be determined) which will perform the "plan check". CITY agrees to only charge the reasonable and customary fees for the Permit and for any and all inspection during construction. CITY agrees to minimize trips for inspection by scheduling as many inspections as is reasonable during each trip to the Property.
5. OWNER understands that CITY has prepared a summary of items regarding the Property, prior Permits and construction claimed to be performed without permit. CITY has provided a copy of these materials to OWNER. OWNER agrees to provide a copy of the CITY's summaries to OWNER's architect and engineers who prepare the plans and to the third party plan check firm for their information and reference. The CITY may contact architect, engineers or the third party plan check firms and provide more documents or information, including, but not limited to the CITY's summaries and other documentation relating to the condition of the Property.
6. OWNER will arrange for the plan check firm to make site visits to the project location and conduct an inspection to confirm that the plans submitted to the firm for review are "as-built" plans and that all of the current conditions at the project site are accurately reflected in the plans. Plans approved by the plan check firm and submitted by OWNER to the CITY for permits will be accompanied by a letter from the plan check firm confirming that a site visit and inspection were completed, and that the approved plans submitted to the CITY reflect the "as-built" conditions. OWNER will provide a defined use of all areas in the project (North and South Buildings) to the plan check firm so that it is clear what the intended use of each space is, and what building codes and regulations are applicable to that intended use.

7. CITY and OWNER agree to the following time line for completion of the steps required by this Agreement:

Said OWNER shall, within ninety (90) business days from the signing of this agreement, submit (1) a scope of work and timeline for the renovation of Property and (2) a copy of plans prepared by architect and/or engineers, which will identify the current as built condition of the Property and the uses of each portion of the Property as now in use, to the Community Development and Fire Departments at the following addresses:

City of Stockton
Community Development Department
325 North El Dorado Street
Stockton, CA 95202

City of Stockton
Fire Department
425 North El Dorado Street
Stockton, CA 95202

Within ninety (90) business days from the signing of his Agreement, OWNER, or his agent, agrees to submit all Plans and submittals for the renovation of the Property to the agreed upon third party plan check company. All plan correction[s] by plan check company shall be responded to within fifteen (15) business days of notice. No extension shall be granted unless approved by Community Development and Fire Departments.

Upon approval of submitted plans, OWNER shall obtain the Permit from Community Development within ten (10) days of notice. All work shall be inspected and approved by Community Development, Building Inspection and Fire Department within 180 days of obtaining permit unless granted extension by Community Development and Fire Departments.

8. It is further understood that this Agreement is being made with OWNER, exclusively, and should not be interpreted in any way to be directed to any other party. Neither the CITY nor the OWNER waives its rights to pursue any and all legal remedies in the event the OWNER or CITY does not comply with any of the promises made herein.

9. This Agreement shall be recorded with the San Joaquin County Recorder.

10. Notwithstanding any other provision of this Agreement, OWNER, agrees to provide the CITY, and other inspectors as may be needed, access to the subject property (interior and exterior of structure) in order to conduct inspections throughout the course of construction.

11. City acknowledges receipt of payment from OWNER of code enforcement abatement costs along with fines and penalties that have accrued up to and including July 1, 2014. CITY agrees to release and discharge any lien that is in place as a result of code enforcement abatement costs along with those fines and penalties assessed and applicable to the Property up to and including July 1, 2014 in a manner consistent with the Stockton Municipal Code.

12. CITY agrees that fines or penalties accruing after July 1, 2014 shall be held in abeyance throughout the pendency of this Agreement. If OWNER violates any term of this Agreement, such fines and penalties accruing after July 1, 2014 shall become immediately due and owing to the CITY, at which time the CITY may use any and all legal means to secure said fines and penalties, including, but not limited to those means provided for in Title 1 of the Stockton Municipal Code. OWNER reserves his rights to challenge or oppose the continued imposition of fines or penalties and/or collection of fines and penalties if the City moves forward with action to secure post July 1, 2014 fines and penalties that are held in abeyance during the pendency of this Agreement. CITY agrees that all fines and penalties held in abeyance during the pendency of this Agreement will be released and waived upon the completion of the Agreement which will occur with the final inspection of the work performed under the permit issued as part of this Agreement.

13. OWNER agrees to maintain the Property free and clear of garbage, junk, and debris.

14. The Parties shall take such actions and shall execute, deliver and file or record (if necessary) any such documents as may be reasonable or necessary to effectuate the purposes and contents of this Agreement.

15. The failure of any Party to insist upon compliance with any of the provisions of this Agreement or the waiver thereof, in any instance, shall not be construed as a general waiver or relinquishment by such Party of any other provision of this Agreement.

16. This Agreement may not be amended except by an instrument in writing, executed by the Parties, and each of them.

17. For purposes of this Agreement, and except as provided above, all notices to be sent to OWNER or CITY, shall be addressed to:

If to OWNER:

Christopher J. Bennitt
c/o Max Steinhelmer
Downey Brand LLP
3425 Brookside Road, Suite A

Stockton, CA 95219

with a copy to:

Max Steinhilmer
Downey Brand LLP
3425 Brookside Road, Suite A
Stockton, California 95216

If to CITY:

Neighborhood Services
22 E. Weber Avenue, 3rd Floor
Stockton, CA 95202

with a copy to:

Bryan Rome, Deputy City Attorney
Stockton City Attorney's Office
425 North El Dorado Street, 2nd Floor
Stockton, CA 95202

18. All notices must be sent by U.S. registered or certified mail, first class, postage prepaid, personal delivery, or overnight delivery service. The Parties and/or their respective attorneys, as set forth in this paragraph, may change their addresses set forth above at any time, provided that any Party, or attorney for a Party, making such a change shall give notice to all others as set forth in this paragraph.

19. This Agreement shall be effective when executed by all of the Parties hereto.

20. This Agreement, along with the exhibit hereto, contains the entire agreement of the Parties and supersedes any and all prior, written or oral, agreements among them concerning the subject matter of this Agreement. There are no representations, agreements, arrangements or understandings, oral or written, among the Parties, relating to the subject matter of this Agreement which are not fully expressed herein.

21. This Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing or of the truth of any claims of CITY or OWNER or as a waiver of any defenses thereto.

22. The terms, provisions and language of this Agreement have been jointly negotiated and drafted by OWNER and CITY and their respective legal counsel. Nothing in this Agreement shall be construed or interpreted against any party as the drafting Party, or for any other reason by operation of similar rules of construction.

23. This Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Any suit or action to enforce the terms of this Agreement shall be brought in the federal or state courts located in California. In any action arising out of or related to this Agreement, the prevailing party shall be entitled to recover its costs and expenses including reasonable attorney's fees.

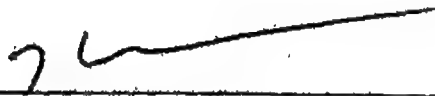
OWNER:

Dated: August 1, 2016.


Christopher J. Bennett

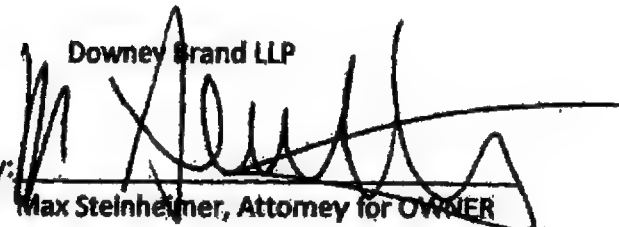
CITY:

10/19/16
Dated: ~~August~~ 10/19/16, 2016.

By: 
KURT WILSON
CITY MANAGER

APPROVED AS TO FORM

Dated: August 19, 2016.

Downey Brand LLP
By: 
Max Steinheimer, Attorney for OWNER

Stockton City Attorney's Office

Dated: August 15, 2016.

By: 
Bryan Rome, Attorney for CITY

EXHIBIT 7

March 8, 2017

Via U.S. Mail and E-Mail Angel.Solis@stocktonca.gov

Angel Solis
Deputy City Attorney
Office of the City Attorney
425 N. El Dorado Street, Second Floor
Stockton, CA 95202

Re: 1825 Pacific Avenue
APN No. 137-020-42
Case No. 12-00100159

Dear Mr. Solis:

On behalf of our client, Christopher J. Bennett, we are writing to request an extension of time to submit proposed plans and specifications under the Agreement with the City of Stockton dated August 19, 2016 (effective October 19, 2016), a copy is attached for your reference.

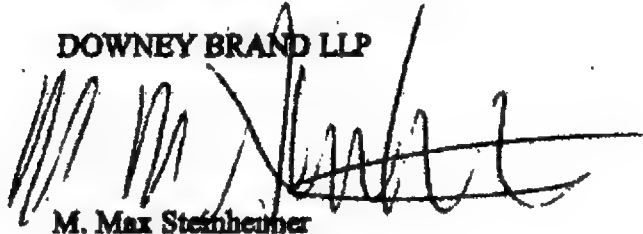
We request an extension of 30 days from the original due date of March 2, 2017, which would make the new submittal date April 3, 2017. Empire has been delayed in completing the plans and specifications because of the complexity of the electrical plan improvements and delays in the interaction with PG&E regarding electrical service.

As I advised you in my previous email, the overall time line for completion of approved construction will not be delayed. Empire has decided to forego submittal to a third party plan check firm as set out in the Agreement. The submittal of plans and specifications on April 3, 2017 will be directly to the City and all timelines of the Agreement (as set forth in paragraph 7 of the Agreement) will thereafter be followed, i.e., plan corrections responded to within 15 business days, permit obtained within 10 business days of approval, and construction completed within 180 days of obtaining the permit.

Please advise if you have additional questions.

Very truly yours,

DOWNEY BRAND LLP



M. Max Steinheimer

MMS/al

Encls.

cc: Client

I, Christopher J. Bennett, do hereby certify the above is true and correct.

DATED: March 8, 2017.


Christopher J. Bennett

Extension Request Approved.

Stockton City Attorney's Office

Dated: March __, 2017.

By: _____

Its: _____

Dated: March __, 2017.

By: _____

Its: _____

EXHIBIT 8

March 27, 2017

VIA E-MAIL & U.S. MAIL

John Luebberke
Deputy City Attorney
Office of the City Attorney
425 N. El Dorado Street, Second Floor
Stockton, CA 95202
John.Luebberke@stocktongov.com

Angel Solis
City Attorney
Office of the City Attorney
425 N. El Dorado Street, Second Floor
Stockton, CA 95202
angel.solis@stocktonca.gov

Re: 1825 Pacific Avenue
APN No. 137-020-42
Case No. 12-00100159

Dear Mr. Luebberke and Mr. Solis:

We have received your letter of March 15, 2017. On behalf of Mr. Bennett, we write to ask you to reconsider his request for an extension of time up to April 3 to submit to the City the plans and specifications set forth in the Agreement.

It is unreasonable for the City to deny the request for an extension.

The request for an extension was accompanied by an explanation that a modification in the agreement would actually REDUCE the time required for completion of the project. We probably did not make that clear. The agreement, as negotiated, provided that Mr. Bennett would submit the plans and specifications to a third party plan check firm rather than directly to the City. The deadline for submittal to the third party plan check firm was March 6, 2017. The agreement did not provide any deadline for the third party plan check firm to complete its work. When Mr. Bennett discussed the timing with the third party plan check firms that were considered, the estimates ranged from 45 days to 90 days for them to complete their work. The agreement did provide that Mr. Bennett would respond to comments from the third party plan check firm within 15 business days. Only after Mr. Bennett responded with corrections would the City begin its process of verifying and approving the corrections and the plans and specifications. As now proposed, the submittal will be directly to the City, by April 3, and it will be completely in the City's control when the comments and requests for corrections come back to Mr. Bennett. Once received, the time limits set out in the agreement would be followed. The result will be that the completion of the project will be ahead of the original schedule set out in the agreement.

It is unreasonable for the City to deny the reasonable request for an extension under these circumstances.

The denial letter does not provide any explanation for the unreasonable denial of the request by the City Fire Department and by Community Development. We contacted the City Attorney's office to ask for an extension on March 1, 2017. As requested by the City, the request was put in writing and signed by Mr. Bennett on March 8, 2017.

We ask that the City reconsider the denial. If approved, the submittal will still be made by April 3. If not, the City does not leave Mr. Bennett any choice but to proceed with litigation.

Very truly yours,

DOWNEY BRAND LLP



M. Max Steinhilber

MMS/al

cc: Client

EXHIBIT 9



JUN 12 2017

CITY OF STOCKTON
OFFICE OF THE CITY ATTORNEY
CITY HALL
425 NORTH EL DORADO STREET
STOCKTON, CA 95202-1997
TELEPHONE (209) 837-8333
FACSIMILE (209) 837-8888

June 7, 2017

Max Steinheimer
Downey Brand LLP
3425 Brookside Road, Suite A
Stockton, California 95129

Re: 1825-1833 Pacific Ave, Stockton, California (APN: 137-020-42)

Please see the attached Notice And Order To Vacate And Cease And Desist All Operations. Please feel free to contact our office should you have any questions.

JOHN M. LUEBBERKE
CITY ATTORNEY

BY


ANGEL A. SOLIS, Deputy City Attorney

AAS/nn



COMMUNITY DEVELOPMENT DEPARTMENT
BUILDING DIVISION - CITY HALL
345 N. EL DORADO ST, STOCKTON, CA 95202
WWW.STOCKTONCA.GOV
(209) 837-8266

**NOTICE AND ORDER TO VACATE AND CEASE AND DESIST ALL
OPERATIONS**

**JUNE 7, 2017 IMMEDIATELY DISCONTINUE ALL BUSINESS
OPERATIONS**

**JUNE 7, 2017 BY 5:00 PM DISCONTINUE ALL OCCUPANCY FOR
RESIDENTIAL PURPOSES**

**JUNE 9, 2017 1:00 PM DISCONTINUE ALL OCCUPANCY OF THE
BUILDING**

JUNE 7, 2017

OCCUPANT/BUSINESSES
ANY/ALL OCCUPANTS/BUSINESSES
1825 - 1831 PACIFIC AVENUE
STOCKTON, CA 95204

CHRISTOPHER J BENNITT
P.O. BOX 8348
STOCKTON, CA 95208

BANK OF AGRICULTURE AND COMMERCE
2021 W MARCH LANE, STE 2D
PO BOX 7066
STOCKTON, CA 95208

RE: 1825 THROUGH 1831 PACIFIC AVENUE (137-020-42) CASE 12-100159

PLEASE TAKE NOTICE THAT The subject property has been deemed a Hazardous and Dangerous building in violation of multiple regulations of the California Fire Code and the Uniform Code for the Abatement of Dangerous Buildings, 1997 edition, chapter 3, section 302 as adopted by the Stockton Municipal Code. Recent inspections by enforcement staff of the City of Stockton found the following immediately Hazardous and Dangerous conditions throughout the building, as more fully noted on the attached list of violations.

These Hazardous and Dangerous conditions located throughout the building pose such an immediate threat to the life, limb, health, safety, and welfare of the public at large and the occupants of this property as to constitute an emergency.

THEREFORE NOTICE IS HEREBY GIVEN THAT THIS PROPERTY IS ORDERED VACATED JUNE 7, 2017 IMMEDIATELY FOR BUSINESS PURPOSES pursuant to Uniform Code for the Abatement of Dangerous Buildings, Section 401.2 et seq. Further Notice is provided that the building and affected businesses cannot be re-occupied until such time as all violations are corrected and approved by the Building Official and Fire Marshal.

NOTICE & ORDER TO VACATE AND CEASE AND DESIST ALL OPERATIONS
CHRISTOPHER J BENNITT
JUNE 7, 2017
Page 2

RE: 1825 THROUGH 1831 PACIFIC AVENUE (137-020-42) CASE 12-100159

A copy of this Notice and Order to Vacate will be posted on the property. The lessor cannot retaliate against a lessee pursuant to section 1942.5 of the Civil Code. No person shall remain in or enter the posted property for any purpose, including conducting any operations, until a building permit has been acquired from the City to repair or demolish the building, and all required repairs have been approved by the City of Stockton. No person shall remove or deface any such Notice after it is posted until the required repairs or demolition have been completed and approved by the City of Stockton. Any person violating these provisions is guilty of a misdemeanor and is subject to imprisonment in the county jail for six months or a fine of \$1,000, or both.

Any person having record title or legal interest in this property has the right to appear before an Administrative Hearing Officer and appeal the City's action by submitting the hearing fee of \$84.75 with an appeal request form to The Community Development Department at the address listed above within ten (10) days of the postmarked date of this letter, pursuant to Stockton Municipal Code (S.M.C.) section 1.44.070. Submission of an appeal does not stay the Order to vacate the premises (Uniform Code for the Abatement of Dangerous Buildings, Section 504 and Uniform Housing Code Section 1204). Failure to file such an appeal shall constitute a waiver of all rights to an Administrative Hearing and adjudication of the Notice and Order or to any portion thereof.

Failure to abate will also result in reinspection fee(s) for each inspection until compliance is obtained. The amount charged for reinspection(s) is determined by the fee schedule of the individual departments. In addition, non-compliance may result in further action being taken against you, including, but not limited to Administrative Citations being issued, the violation(s) being abated at your expense, an Administrative fee of up to \$858.00, and/or civil penalties of up to \$1,000 per day. All violations listed herein must be abated by repair and approved prior to reoccupancy. Required permits for repairs or demolition must be obtained before commencing work.

If you have any questions, please contact Senior Code Enforcement Officer Carrie Lane at (209) 937-8369.


DAVID KWONG
DIRECTOR/COMMUNITY
DEVELOPMENT DEPARTMENT


ERIK NEWMAN
FIRE CHIEF, STOCKTON
FIRE DEPARTMENT

DK/EN:CAL:vr

NOTICE & ORDER TO VACATE AND CEASE AND DESIST ALL OPERATIONS
CHRISTOPHER J BENNITT
JUNE 7, 2017
Page 3

RE: 1825 THROUGH 1831 PACIFIC AVENUE (137-020-42) CASE 12-100169

LIST OF VIOLATIONS

I. DANGEROUS AND HAZARDOUS CONDITIONS MANDATING A NOTICE TO VACATE:

A. Failure to comply with Previous Violation Notices and Stipulation Agreement:

1. Failure to comply with Stipulation Agreement, Issued on August 19, 2016 – SMC 1.32.010
2. Failure to comply with Community Development Department's corrective action notice, Issued March 26, 2014. – SMC 1.32.010
3. Failure to comply with Civil Penalty Notice and Order, Issued February 6, 2014. – SMC 1.32.010
4. Failure to comply with Administrative Citation, NSS# 100683, Issued December 9, 2013. – SMC 1.32.010
5. Failure to comply with Administrative Citation, NSS# FY02217, Issued March 6, 2012. – SMC 1.32.010
6. Failure to comply with Notice to Vacate, Issued January 31, 2012. – SMC 1.32.010 // UCADB 404.2

B. Dangerous Conditions at Empire/Royal Theatre – 1825 Pacific Avenue:

1. Illegal, un-permitted alterations and additions to the tenant occupied spaces. – SMC 15.04.250, 260, 310 // UCADB 302.13
2. Blocked exit pathways within the main theatre. – UCADB 302.2 // CBC 1014.4
3. West side and East side exit doors within the main theatre do not open correctly presenting a hazard in the event of an emergency. – CBC 1008.1.8.7 // UCADB 302.2

NOTICE & ORDER TO VACATE AND CEASE AND DESIST ALL OPERATIONS
CHRISTOPHER J BENNITT
JUNE 7, 2017
Page 4

4. West side and East side emergency lights within the main theatre are not functioning which will prevent people from locating exit doors in an emergency. – CFC 604.6
5. The ceiling throughout the theatre is damaged and deteriorated due to water intrusion. – CFC 703.1 // UCADB 302.13
6. There are multiple extension cords being used as permanent sources of electrical installation throughout the theatre. – CFC 605.5
7. Separation walls between Main Theatre, dressing rooms, storage areas and north storage area have been constructed without meeting minimum Building code standards. – UCADB 302.13 // CFC 703.1
8. The curtain on the north stage is not flame retardant. – CFC 807.3 Title 19, Division 1, 5.08, Decorative Materials // UCADB 302.13

C. Dangerous Conditions at Espresso Coffee House Including Seating and Patio Area – 1825 Pacific Avenue:

1. The entrance and exit from the Coffee shop and the main Theatre are blocked, which will prevent people from utilizing the exits in the event of an emergency. – CFC 1028.3
2. There are inoperable Exit signs and/or disconnected Exit signs within the Coffee portion of the building which will prevent patrons from locating the exit in the event of an emergency. – UCADB 302.13 // CFC 604.6.1
3. There are unsecured compressed gas cylinders being stored within the Coffee shop as well as in the seating/patio area. – CFC 5303.5.3
4. There are multiple extension cords being used as permanent sources of electrical installation throughout the business and seating area, including the electric room, storage rooms, box office and the office area. In addition, extension cords have actually been installed through holes cut in the walls, ceilings, doorways and other locations. Many of the extension cords are damaged and deteriorated, presenting an even high risk of fire. – CFC 605.5 // UCADB 302.13

NOTICE & ORDER TO VACATE AND CEASE AND DESIST ALL OPERATIONS
CHRISTOPHER J BENNITT
JUNE 7, 2017
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5. Extension cords have been placed underneath the mats which employees stand on behind the service counter of the Coffee shop. These extension cords are all that are used to supply electricity to island equipment, rather than installation of permanent sources of electrical installation. These cords are damaged/deteriorated and being walked on, further damaging them and increasing the fire risk. - CFC 605.5
6. The stage lighting at the Lobby Piano is connected with extension cords. - CFC 605.5
7. There is illegal exposed wiring in the storage area off the seating area, the electric room off the seating area and the box office area. Further, the extension cords for the equipment is damaged or deteriorated in the storage area, increasing the fire risk. - UCADB 302.13 // CFC 605.6
8. There is illegal wiring and extension cords being used at Lobby box office ticket windows and used to light up the advertisement boards. - UCADB 302.13 // CFC 605.3
9. The required Fire extinguishers have not been properly serviced and are not operational. - CFC 906.2
- D. Dangerous Conditions at Centrale - 1825 Pacific Avenue, Suite 2:
 1. There are unsecured compressed gas cylinders being stored within Centrale. - CFC 3003.5.3 // CFC 5303.5.3
 2. The Exit sign at the rear of the kitchen is not illuminated, which will prevent patrons from locating the exit in the event of an emergency. - CFC 1013.3
 3. There are multiple extension cords being used as permanent sources of electrical installation throughout the business. - CFC 605.5
 4. There are missing exterior receptacle covers in the patio area of Centrale. - CFC 605.6 // UCADB 302.13

NOTICE & ORDER TO VACATE AND CEASE AND DESIST ALL OPERATIONS
CHRISTOPHER J BENNITT
JUNE 7, 2017
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5. There is illegal exposed wiring in the exterior patio area of Centrale. – UCADB 302.13 // CFC 605.6

E. Dangerous Conditions at Catalyst Realty – 1825 Pacific Avenue, Suites 3 and 4;

1. There are multiple extension cords being used as permanent sources of electrical installation throughout the first and second floor of Catalyst Realty. – CFC 605.5
2. The second story emergency exit is not accessible, preventing the required exiting in the event of an emergency. – CFC 1008.1.2 // CBC 1015.1 // CFC 1019.1
3. The Exit signs within Catalyst Realty are not illuminated, which will prevent people from locating exit doors in an emergency. – CFC 1013.3

F. Dangerous Conditions at Gusto Wings – 1825 Pacific Avenue, Suite 5;

1. There are multiple extension cords being used as permanent sources of electrical installation throughout the restaurant. – CFC 605.5 // UCADB 302.13
2. The fat fryer on the west side of the cookers is not positioned under hood and duct system nozzle. – CFC 904.1 // NFPA 17A

G. Dangerous Conditions at The Mile – 1825 Pacific Avenue, Suite 6;

1. The main Front roll up door does not operate properly in the open safely and securely. Currently, the door is secured open by use of a screwdriver as a wedge, which if accidentally knocked out would cause serious injury to persons in it's path. – UCADB 302.13
2. There are multiple extension cords being used as permanent sources of electrical installation throughout The Mile. – CFC 605.5
3. There is an extension cord that is running through an upstairs office window to power the outside exterior lighting. – CFC 605.5
4. The interior space behind the wall at the upper level of the stairway is open and does not provide the required fire protection and would serve to spread a fire very rapidly throughout the entire building. – CFC 703.1 // UCADB 302.13

NOTICE & ORDER TO VACATE AND CEASE AND DESIST ALL OPERATIONS
CHRISTOPHER J BENNITT
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5. The wall is breached at the west side of the bar and does not provide fire protection and would serve to spread a fire very rapidly throughout the entire building. – CFC 703.1 // UCADB 302.13
6. There is exposed electrical wiring throughout the bar area, second floor stairway and second floor security room. – UCADB 302.13 // CFC 605.6
- H. Illegal Living Unit/Dangerous Conditions at Former Office Space conversion – 1827 Pacific Avenue:
 1. Illegal, un-permitted alteration of Office space into a rented dwelling unit. – UCADB 302.9 // 15.04.250, 260, 310
 2. The exterior door of the rented dwelling unit has a dual-keyed lock which would not allow the occupant to exit in an emergency without the use of a key. – SMC 15.24.030 (b) 12 // H&S 17920.3.i // UCADB 302.13 // CBC 1008.1.8.7
 3. The windows have permanent bars blocking emergency exiting and do not meet the minimum sizing to allow for emergency escape and rescue. – SMC 15.24.030 (b) 12 // H&S 17920.3.i // UCADB 302.13 // CBC 1008.1.8.7
 4. The required interior hall lighting at the stairs is not working. – UHC 701.2 // SMC 15.24.030 (b) 4, 13 // H&S 17920.3.d, 17920.3.i
 5. The room next to the kitchen/bathroom area which is being used as a bedroom does not meet the minimum requirements as a bedroom. – UHC 503.2 // UCADB 302.13
 6. The ceiling material throughout the living space is damaged and deteriorated. – SMC 15.24.030 (b) 3 // H&S 17920.3.c // CFC 703.1 // UCADB 302.13
 7. The wall material throughout the living space is damaged and deteriorated. – SMC 15.24.030 (b) 3 // H&S 17920.3.c // UCADB 302.13
 8. The bathroom ventilation system and light is illegally installed in the shower and does not meet the minimum safety requirements for wet locations. – SMC 15.24.030 (b) 6 // H&S 17920.3.f

NOTICE & ORDER TO VACATE AND CEASE AND DESIST ALL OPERATIONS
CHRISTOPHER J BENNITT
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9. There are missing and damaged receptacle covers and light switch plate covers throughout the living unit. – UHC 701.2

10. There are missing handrails on loft stairway making an unsafe exit pathway. – SMC 15.24.030 (b) 9 // H&S 17920.3.1

11. There are no carbon monoxide and smoke detectors installed in the living space as required by code to notify. – 15.24.030 (b) 16 // CFC 1103.8 // CFC 915.1 // UCADB 302.13

I. Dangerous Conditions at Serendipity Salon – 1829 Pacific Avenue:

1. The stairs to the second floor of the Salon do not meet the minimum Building code requirements for size, width, handrails and other requirements creating a hazardous condition. – UCADB 302.1
2. Extension cords are being used as the permanent sources of electrical power for all equipment in the salon. – CFC 605.5
3. There are missing illuminated exit signs and exit lighting that would prevent occupants from being able to locate exits in the event of an emergency. – CFC 1013.3 // UCADB 302.13

J. Dangerous Conditions at Casa Flores Restaurant – 1831 Pacific Avenue:

1. There are missing panel covers on the electrical sub-panels which create a fire and electrical shock hazard. – CFC 605.6
2. There are missing illuminated exit signs and exit lighting which would prevent occupants from being able to locate exits in the event of an emergency. – CFC 1013.3
3. There is damaged sheetrock in the stairway behind the register, creating a potential fire hazard. – SMC 15.24.030 (b) 9 // CFC 703.1
4. There is a high fire hazard which exists as a result of the significant buildup of grease in the flue cooking vent. – CFC 904.12.6

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5. The Restaurant's kitchen is either missing the required Fire extinguishers, or the existing extinguishers are not those that are required to be installed in a commercial kitchen operation to be used in the event of a grease or similar fire. - CFC 904.12.5.2
6. There is an accumulation of excessive grease from the exhaust hood and cooking appliances in the kitchen area. - CFC 904.12.6
7. The Restaurant is currently using a plastic storage cover plate in the attic storage area rather than the approved fire rated cover, which is required to help contain a grease fire in the kitchen from spreading rapidly to the attic area, and then throughout the entire building. - CFC 703.1
8. There is a potential fire hazard caused by the exposed wiring in the bathroom on the second level storage area which is accessed by the stairway behind the register. - CFC 605.6
9. There are multiple extension cords being used as permanent sources of electrical installation throughout the Restaurant. - CFC 605.5

II. CONDITIONS CONSIDERED DANGEROUS BUT NOT HAZARDOUS:

A. Lack of or improperly installed sprinkler/fire protection systems. - SMC 15.12.040

B. Dangerous Conditions at Empire/Royal Theatre - 1825 Pacific Avenue:

1. The electrical panels/shutoffs require identification and labeling. - NEC 408.4 A
2. Repair the damaged and deteriorated paths of travel in the seating area within the theatre. - UCADB 302.13
3. The ceiling scuttle door is missing inside the closet next to the east exit door. - CFC 703.1
4. Repair the damaged and deteriorated electrical receptacle outlet cover plates throughout the theatre. - CFC 605.6

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C. Dangerous Conditions at Espresso Coffee and Seating/Patio Area – 1825 Pacific Avenue:

1. The test switch is missing on the emergency lighting to the north of the entrance/exit. – CFC 604.6.1
2. The exit sign to the north of the entrance/exit door does not operate properly would prevent someone from locating an exit in an emergency. – CFC 604.6.1
3. Provide appropriate clearance around electrical sub-panels throughout the Coffee shop which are currently blocked by storage and other items. – NEC 110.26.A // UCADB 302.13
4. Provide covers on all open electrical boxes, electrical panels to include dead front, light fixtures, receptacle outlets and other electrical covers throughout the Coffee shop, the seating area and the patio area which are missing. – CFC 605.6
5. Repair damaged and/or missing receptacle covers throughout the Coffee shop and seating area. – CFC 605.6
6. Repair the ceiling material in the kitchen area which is damaged, deteriorated and missing. – CFC 703.1 // UCADB 302.13

D. Dangerous Conditions at Balance Physical Therapy – 1825 Pacific Avenue, Suite 1:

1. The railings on the interior stairway are not connected to the stairs and pose a safety hazard. – UCADB 302.2

E. Dangerous Conditions at Centrale – 1825 Pacific Avenue, Suite 2:

1. Completely remove the accumulation of grease and debris from kitchen hoods and cooking appliances in the Restaurant which, could create a fire hazard. – CFC 904.12.6

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F. Dangerous Conditions at Catalyst Realty – 1825 Pacific Avenue, Suites 3 and 4:

1. Repair the ceiling tile in the second floor electrical room which is damaged, deteriorated and/or missing. – CFC 703.1 // UCADB 302.13
2. Repair the damaged ceiling and walls in the storage room. – CFC 703.1 // UCADB 302.13

G. Dangerous Conditions at Gusty Wings – 1825 Pacific Avenue, Suite 5:

1. The fat fryers need side splash guards. – CFC 904.1 // NFPA 17A
2. Completely clean grease from hood areas and walls which could create a fire hazard. – CFC 904.11.6.3
3. Completely remove the garbage, debris and other combustible items being stored around the water heater. – CFC 315.3.3

H. Dangerous Conditions at The Mile – 1825 Pacific Avenue, Suite 6:

1. There is not proper clearance provided around the electrical sub-panels throughout the establishment, including the kitchen and bar area. – NEC 110.26.A // UCADB 302.13
2. All Fire extinguishers need to be within 75 feet of the area to be protected. – CFC Table 906.3.1

I. Dangerous Conditions at Serendipity Salon – 1829 Pacific Avenue:

1. There is not proper clearance provided around the electrical sub-panel. – UCADB 302.13 // NEC 110.26.A
2. Repair the missing or damaged electrical covers throughout the Salon. – CFC 605.6
3. The Fire extinguishers require proof of annual service/recharge. – CFC 906.2

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I. Dangerous Conditions at Casa Flores Restaurant – 1831 Pacific Avenue:

1. There is not proper clearance provided around the electrical sub-panel. – UCADB 302.13 // NEC 110.26.A
2. The electrical installation within the foot print of the kitchen exhaust hood at the cooking area is not correctly installed. – NEC 110.26.A // UCADB 302.13
3. There is damaged ceiling, floors and walls throughout the restaurant, the kitchen, the storage area, the bathrooms and the stairway. – CFC 703.1
4. There is an accumulation of garbage, junk, debris, combustible materials, stored materials and other such items which have created a tripping hazard in the second floor storage area, the electrical rooms, the mechanical rooms, the stairs and other locations throughout the Restaurant. – CFC 315
5. There are improperly installed hand rails on the stairway behind the register. – UCADB 302.2
6. There is damaged stair covering (tile) on the stairway behind the register. – UCADB 302.2
7. There are missing or damaged electrical receptacle covers throughout the restaurant. – CFC 605.6

III. CORRECTIVE ACTIONS REQUIRED FOR THE DANGEROUS AND HAZARDOUS CONDITIONS:

1. Submit two complete sets of plans prepared by a licensed Architect or Engineer to reflect all as-built conditions to the entire parcel address to comply with the currently adopted 2016 Building codes and Stockton Municipal codes to the Community Developments Department. This shall include, but not limited to the following listed violations. – 15.04.250, 260, 310 // UCADB 302.13

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Empire/Royal Theatre:

1. Ensure exit egress pathways are not blocked within the main theatre and clear of all obstacles. Egress pathways must be accessible as required for emergency exit. – UCADB 302.2 // CBC 1014.4
2. Repair or replace west side exit door which does not operate properly. – CBC 1008.1.8.7 // UCADB 302.2
3. Repair or replace east side exit door which does not operate properly. – CBC 1008.1.8.7 // UCADB 302.2
4. Repair or replace west side emergency lights which are not functioning. – CFC 604.6
5. Repair or replace east side emergency lights which are not functioning. – CFC 604.6
6. Determine the source of the water intrusion throughout the theatre which has caused the ceiling to be damaged and/or deteriorated. Once determined, repair appropriately. Replace the damaged, deteriorated and/or missing ceiling material throughout and properly seal. – CFC 703.1 // UCADB 302.13
7. Cease using extension cords as permanent sources of electrical installation throughout the theatre. – CFC 605.5
8. Legally construct and/or remove the separation walls between Main Theatre, dressing rooms, storage areas and north storage area which are not constructed to meet minimum code standards. – UCADB 302.13 // CFC 703.1
9. The curtain on the north stage needs to either (a) be removed; (b) flame-retardant treated; or (c) to be field tested by Stockton Fire Department Inspector. – CFC 807.8 Title 19, Division 1, S.08.Decorative Materials // UCADB 302.13

Empresso Coffee and Seating/Patio area:

1. Clear hazards near the entrance/exit which are a hazard for people exiting the theatre. – CFC 1028.3

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2. Properly repair inoperable Exit signs or remove disconnected Exit signs which are no longer required or in service. -- UCADB 302.13 // CFC 604.6.1
3. Properly secure all compressed gas cylinders in an approved manner. -- CFC 5303.5.3
4. Cease using extension cords as permanent sources of electrical installation throughout the business and seating area, electric room, storage rooms, box office and office area. -- CFC 605.5 // UCADB 302.13
5. Remove the stage lighting at the Lobby Piano which are connected with extension cords. -- CFC 605.5
6. Properly cap all exposed wiring in the storage area off the seating area, electric room off the seating area and box office area. -- UCADB 302.13 // CFC 605.6
7. Remove all illegal wiring and cords from Lobby box office ticket windows and advertisement boards. -- UCADB 302.13 // CFC 605.3
8. Repair or replace all electrical cords for equipment which are damaged or deteriorated in the storage area off the seating area. -- UCADB 302.13
9. Fire extinguishers require annual service/recharge. Ensure all fire protection systems have been properly serviced. -- CFC 906.2

Centrale:

1. Properly secure all compressed gas cylinders in an approved manner. -- CFC 3003.5.3 // CFC 5303.5.3
2. Repair or replace the exit sign at the rear of the kitchen which is not illuminated. -- CFC 1013.3
3. Cease using extension cords as permanent sources of electrical installation throughout the business. -- CFC 605.5
4. Replace all missing exterior receptacle covers in the patio area of Centrale. -- CFC 605.6 // UCADB 302.13

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5. Properly cap all exposed wiring in the exterior patio area of Centrale. – UCADB 302.13 // CFC 605.6

Catalyst Realty:

1. Cease using extension cords as permanent sources of electrical installation throughout the first and second floor of Catalyst Realty. – CFC 605.5
2. Second story emergency exit is not accessible or installed to meet the minimum exiting requirements. Exit doors must swing in the direction of travel and there must be 2 exits per occupancy load. – CFC 1008.1.2 // CBC 1015.1 // CFC 1019.1
3. Repair or replace the exit sign which is not illuminated. – CFC 1013.3

Gusty Wings:

1. Cease using extension cords as permanent sources of electrical installation throughout the restaurant. Remove all illegal extension cords from the ceilings, counter areas, kitchen and dining areas. – CFC 605.5 // UCADB 302.13
2. Fat fryer on west side of cookers needs to be repositioned under extinguishing system nozzle. – CFC 904.1 // NFPA 17A

The Mille:

1. Ensure the front roll up door properly functions to include securing. When business door is unlocked, roll-up door must stay open on its own. Currently, the door is secured open by use of a screwdriver wedge. – UCADB 302.13
2. Cease using extension cords as permanent sources of electrical installation throughout The Mille. – CFC 605.5
3. Eliminate extension cord from upstairs office to outside exterior lighting. – CFC 605.5
4. Properly seal the opening to interior space behind the wall at the upper level of the stairway with approved fire-rated construction. – CFC 703.1 // UCADB 302.13

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5. Properly repair the wall breach west of the bar with fire-rated construction. – CFC 703.1 // UCADB 302.13
6. Properly cap all exposed wiring throughout the bar area, second floor stairway and second floor security room. – UCADB 302.13 // CFC 605.6

Rented Dwelling Unit:

1. Provide documentation that apartment unit is an approved use. Previous approved use was for Royal Theatre Office. If no documentation provided, return to original configuration/use. – UCADB 302.9 // 15.04.250, 260, 310
2. Repair or replace front exterior door and hardware which is damaged, deteriorated. Exterior doors must function properly during an emergency without the use of tools, i.e. keys. Remove the dual-keyed lock and install an approved locking mechanism. – SMC 15.24.030 (b) 12 // H&S 17920.3.1 // UCADB 302.13 // CBC 1008.1.8.7
3. Properly install windows which are code compliant for emergency egress during an emergency. Remove the bars on the windows and ensure all windows open, close and properly operate. – SMC 15.24.030 (b) 12 // H&S 17920.3.1 // UCADB 302.13 // CBC 1008.1.8.7
4. Properly repair or replace the interior hall lighting. – UHC 701.2 // SMC 15.24.030 (b) 4, 13 // H&S 17920.3.d, 17920.3.i
5. Cease occupying the room next to the kitchen/bathroom area as a bedroom. Habitable rooms shall have an area of not less than 70 square feet. – UHC 503.2 // UCADB 302.13
6. Properly repair the damaged and/or missing ceiling material throughout the living space. – SMC 15.24.030 (b) 3 // H&S 17920.3.c // CFC 703.1 // UCADB 302.13
7. Repair or replace the damaged wall material throughout the living space. – SMC 15.24.030 (b) 3 // H&S 17920.3.c // UCADB 302.13
8. Properly install bathroom lighting and bathroom ventilation system. – SMC 15.24.030 (b) 6 // H&S 17920.3.f

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9. Properly install receptacle covers and light switch plate covers throughout the living unit. - UHC 701.2
10. Properly install code compliant handrails on loft stairway. - SMC 15.24.030 (b) 9 // H&S 17920.3.1
11. Properly install required carbon monoxide and smoke alarms in an approved manner. - 15.24.030 (b) 16 // CFC 1103.8 // CFC 915.1 // UCADB 302.13

Serendipity Salon:

1. Properly construct the stairs to the second floor of the Salon which do not meet minimum code requirements for size, width, handrails and other requirements. - UCADB 302.1
2. Cease using extension cords as permanent sources of electrical installation. - CFC 605.5
3. Provide the required egress requirements including any required illuminated exit signage and egress lighting. - CFC 1013.3 // UCADB 302.13

Casa Flores Restaurant:

1. Install all missing panel covers on sub-panels. - CFC 605.6
2. Provide the required egress requirements including illuminated exit signage and egress lighting. - CFC 1013.3
3. Repair or replace the exit sign which is not illuminated. - CFC 1013.3
4. Repair or replace the damaged sheetrock in the stairway behind the register. - SMC 15.24.030 (b) 9 // CFC 703.1
5. Clean the grease from the flue cooking vent and maintain in a neat and sanitary manner. - CFC 904.12.6
6. Properly install K-type extinguisher in the kitchen area. - CFC 904.12.5.2

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7. Properly remove the accumulation of grease from the exhaust hood and cooking appliances in the kitchen area. – CFC 904.12.6
8. The plastic storage cover plate in the attic storage area on the second floor needs to be replaced with an approved fire rated cover. – CFC 703.1
9. Properly cap off all exposed wiring in the bathroom on the second level storage area, accessed by the stairway behind the register. – CFC 605.6
10. Cease using extension cords as permanent sources of electrical installation. – CFC 605.5
11. In an existing building where a change of use occurs and the new use is more restrictive than the previous use or the original intended use of the building changes, an automatic sprinkler system shall be installed. In existing buildings, other than residential, greater than 6,000 square feet in area, and the repair and/or alterations are performed in excess of 10% (ten percent), an automatic fire sprinkler system shall be installed within the building. – SMC 15.12.040

IV. CORRECTIVE ACTIONS REQUIRED FOR CONDITIONS CONSIDERED DANGEROUS BUT NOT HAZARDOUS:

Empire/Royal Theatre:

1. Properly identify and label electrical panels/disconnects. – NEC 408.4 A
2. Repair or replace damaged, deteriorated paths of travel in seating area (i.e. steps) and the covering material within the theatre. – UCADB 302.13
3. Ceiling scuttle door is missing inside the closet next to the east exit door. Repair or replace appropriately. – CFC 703.1
4. All electrical outlet cover plates must be intact throughout the theatre. – CFC 605.6

Empresso Coffee and Seating/Patio area:

1. Test switch is missing on emergency lighting to the north of the entrance/exit. Repair or replace to ensure correct operation. – CFC 604.6.1

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2. The exit sign to the north of the entrance/exit door does not function properly. Repair or replace to ensure correct operation. – CFC 604.6.1
3. Provide proper clearance around sub-panels throughout. Remove all materials 3 feet from in front of the equipment to a width of the panel and grade level to 6 feet, 6 inches. – NEC 110.26.A // UCADB 302.13
4. Properly install covers on all open electrical boxes, panels to include dead front, light fixtures, receptacle outlets and other electrical covers throughout. – CFC 605.6
5. Repair or replace all damaged and/or missing receptacle covers throughout Espresso Coffee and seating area. – CFC 605.6
6. Repair or replace the ceiling material in the kitchen area which is damaged, deteriorated and/or missing. – CFC 703.1 // UCADB 302.13

Balance Physical Therapy:

1. Properly secure and install code compliant stair railings on the interior stairway. – UCADB 302.2

Centrale:

1. Properly clean all grease and debris from kitchen hoods and cooking appliances. – CFC 904.12.6

Catalyst Realty:

1. Repair or replace the ceiling tile in the second floor electrical room which is damaged, deteriorated and/or missing. – CFC 703.1 // UCADB 302.13
2. Repair or replace the damaged ceiling and walls in the storage room. – CFC 703.1 // UCADB 302.13

Gusty Wings:

1. Properly install splash guards on fat fryers. – CFC 904.1 // NFPA 17A
2. Properly clean grease from hood areas and walls. – CFC 904.11.6.3

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3. Remove all items being stored around water heater and allow access to unit. - CFC 315.3.3

The Mille:

1. Provide proper clearance around sub-panels throughout, to include kitchen and bar area. Remove all materials 3 feet from in front of the equipment to a width of the panel and grade level to 6 feet, 6 inches. - NEC 110.26.A // UCADB 302.13
2. Fire extinguishers need to be within 75 feet of area to be protected. - CFC Table 906.3.1

Serendipity Salon:

1. Provide proper clearance around sub-panel. Remove all materials 3 feet from in front of the equipment to a width of the panel and grade level to 6 feet, 6 inches. - UCADB 302.13 // NEC 110.26.A
2. Replace the missing or damaged electrical covers throughout the Salon. - CFC 605.6
3. Fire extinguishers require annual service/recharge. - CFC 906.2

Casa Flores:

1. Provide proper clearance around sub-panel. Remove all materials 3 feet from in front of the equipment to a width of the panel and grade level to 6 feet, 6 inches. - NEC 110.26.A // UCADB 302.13
2. Properly install all electrical installations within the foot print of the kitchen exhaust hood at the cooking area. The current installation of the electrical panel below the exhaust hood is not an approved installation. - NEC 110.26.A // UCADB 302.13
3. Repair or replace the damaged ceiling, floors and walls throughout the restaurant, kitchen, storage area, bathrooms and stairway. - CFC 703.1

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4. Remove the accumulation of garbage, junk, debris, combustible materials, stored materials and other such items which have created a tripping hazard in the second floor storage area, electrical rooms, mechanical rooms, stairs, etc. Allow for proper egress to and from these areas throughout the restaurant. – CFC 315
5. Properly install code compliant hand rails on the stairway behind the register. – UCADB 302.2
6. Repair or replace the damaged stair covering (tile) on the stairway behind the register. – UCADB 302.2
7. Replace the missing or damaged electrical covers throughout the restaurant. – CFC 605.6



COMMUNITY DEVELOPMENT DEPARTMENT
BUILDING DIVISION - CITY HALL
345 N. EL DORADO STREET
STOCKTON, CA 95202
(209) 937-8266

NOTICE TO VACATE HAZARDOUS/UNSAFE BLDG.

ADDRESS: 1825 THROUGH 1829 PACIFIC AVENUE, STOCKTON, CA

ASSESSOR'S NO.: 137-020-42

THIS PROPERTY OR THE FOLLOWING PORTION THEREOF, HAS BEEN DETERMINED TO BE HAZARDOUS, UNSAFE AND/OR SUBSTANDARD. THERE IS A RISK TO THE HEALTH AND SAFETY OF ITS OCCUPANTS. THIS DETERMINATION HAS BEEN MADE PURSUANT TO THE STOCKTON MUNICIPAL CODE, CALIFORNIA FIRE CODE AND THE UNIFORM CODE OF THE ABATEMENT OF DANGEROUS BUILDINGS.

NOTICE IS ALSO GIVEN THAT THIS BUILDING, OR THE PORTION MENTIONED ABOVE, MUST BE VACATED IMMEDIATELY. ANY PERSON HAVING RECORD TITLE OR LEGAL INTEREST IN THIS PROPERTY HAS THE RIGHT TO APPEAR BEFORE AN ADMINISTRATIVE HEARING OFFICER AND APPEAL THIS NOTICE AND ORDER TO VACATE IN ACCORDANCE (S.M.C.) SECTION 1.44.070 OF THE STOCKTON MUNICIPAL CODE. ANY APPEAL MUST BE MADE IN WRITING AND SUBMITTED WITHIN TEN (10) CALENDAR DAYS FROM THE DATE OF MAILING OF THIS NOTICE. THIS MAY BE DONE BY FILING OUT AN APPLICATION AT THE CITY OF STOCKTON COMMUNITY DEVELOPMENT DEPARTMENT, BUILDING DEPARTMENT, 345 N. EL DORADO STREET, STOCKTON, CA. SUBMISSION OF AN APPEAL DOES NOT STAY THE ORDER TO VACATE THE PREMISES (UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS, SECTION 604). FAILURE TO FILE SUCH AN APPEAL SHALL CONSTITUTE A WAIVER OF ALL RIGHTS TO AN ADMINISTRATIVE HEARING AND ADJUDICATION OF THE NOTICE AND ORDER OR TO ANY PORTION THEREOF. IT SHALL BE UNLAWFUL AND A MISDEMEANOR FOR ANY PERSON TO USE, OCCUPY, OR CAUSE OR PERMIT THE USE OR OCCUPANCY OF THE PREMISES AFTER THE DATE LISTED ABOVE. THE PENALTY FOR EACH DAY OF SUCH VIOLATION IS A FINE OF NOT MORE THAN \$1,000 OR A JAIL SENTENCE OF NOT MORE THAN 180 DAYS, OR BOTH. IT IS A MISDEMEANOR TO REMOVE OR DEFACE THIS NOTICE.

DATE OF POSTING 6/7/17

POSTED BY C. Lane

COMMUNITY DEVELOPMENT DEPARTMENT

EXHIBIT 10

London, Susie

From: Vignolo, Anthony
Sent: Tuesday, November 07, 2017 10:34 AM
To: London, Susie
Subject: FW: 1825 Pacific Avenue

From: Angel Solis [<mailto:Angel.Solis@stocktonca.gov>]
Sent: Monday, June 12, 2017 4:14 PM
To: Vignolo, Anthony
Cc: Nancy Nguyen
Subject: RE: 1825 Pacific Avenue

Mr. Vignolo,

I have received your request and my office is in the process of figuring out the City representatives' availability. I will follow up with you as soon as I can.

Regards,

Angel Solis, Deputy City Attorney
CITY OF STOCKTON
425 N. El Dorado Street, 2nd Floor
Stockton, CA 95202-1997
(209) 937-8333

From: Vignolo, Anthony [<mailto:avignolo@DowneyBrand.com>]
Sent: Monday, June 12, 2017 11:55 AM
To: Angel Solis <Angel.Solis@stocktonca.gov>
Cc: Steinheimer, Max <msteinheimer@DowneyBrand.com>; London, Susie <slondon@DowneyBrand.com>
Subject: 1825 Pacific Avenue

Angel,

My client and I, and our design professionals, would like to meet with City representatives as soon as possible to discuss the alleged violations and explore an expeditious resolution. Of course, it is imperative that City representatives who have authority to sign off on a resolution be present at the meeting, as well as the City Manager, since we want to be sure that we are not going back to the drawing board several times. Please let me know some dates that work for the City and I will coordinate with my team.

Thank you,

Anthony L. Vignolo

DOWNEY BRAND
Downey Brand LLP
3425 Brookside Road, Suite A
Stockton, CA 95219
209.473.6450 Main

209.472.3920 Direct
209.472.3921 Fax
avignolo@downeybrand.com
www.downeybrand.com

CONFIDENTIALITY NOTICE: This communication and any accompanying document(s) are confidential and privileged. They are intended for the sole use of the addressee. If you receive this transmission in error, you are advised that any disclosure, copying, distribution, or the taking of any action in reliance upon the communication is strictly prohibited. Moreover, any such inadvertent disclosure shall not compromise or waive the attorney-client privilege as to this communication or otherwise. **If you have received this communication in error**, please contact our IS Department at its Internet email address (is@downeybrand.com), or by telephone at (916)444-1000 x5325. Thank you.

EXHIBIT 11

<- Back

BUILDING AND HOUSING BOARD OF APPEALS



BOARD DETAILS

MEMBER ROSTER

**7 CURRENT VACANCIES****0 TERMS EXPIRED**

board_name=

Size	Term Length	Term Limit
7 Members	4 Years	2 Terms

Description

To hear appeals of decisions made by the Building Official relative to denials of requests to use alternative methods and materials, from aggrieved parties relative to the application of the Uniform Housing Code, Calif. Fire Code, Calif. Building Code, Uniform Code for Abatement of Dangerous Buildings, Calif. Plumbing Code, Calif. Mechanical Code, Calif. Electric Code, and related regulations of the City of Stockton.

Notwithstanding any other provisions of this Code, the Board whenever there are practical difficulties in carrying out the provisions of the above-mentioned Model Codes or related regulations of the City, may grant modifications for individual cases, provided it shall first find that special individual reason makes compliance with the strict letter of these codes and regulations impractical and that the modification is in conformity with their intent and purpose.

Minimum Qualification/Requirements

Must be a resident of the City of Stockton at the time of application and continuously thereafter. Failure to reside within the City shall result in automatic forfeiture of appointment. Written notice change of residence shall be filed with the City Clerk.

After appointment: Ethics Training

FPPC Statement of Economic Interests (Form 700)

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Required Membership Composition:

(1) General Building Contractor; (1) Plumbing Contractor; (1) Electrical Contractor; (1) Mechanical Contractor; (1) Engineer or Architect; (2) from the lay community

Meeting Date/Location

As-needed on the Third Wednesday of the month at 5:45 p.m.
Community Development Department Conference Room
345 N. El Dorado Street
Stockton, CA 95202

Remuneration:

\$20 per meeting (not to exceed \$120 per month).
Remuneration established by Council Ordinance No. 11-95 C.S. - July 12, 1995

SEI Officer

Sylvia Sandoval
345 N. El Dorado Street
Stockton, CA 95202
(209) 937-8444
Sylvia.Sandoval@stocktonca.gov (mailto:Sylvia.Sandoval@stocktonca.gov)

Ex-Officio Secretary

Director, Community Development Department/Building Division

EXHIBIT 12

**BEFORE THE BUILDING AND HOUSING
BOARD OF APPEALS
OF
THE CITY OF STOCKTON**

Appeal of Christopher J. Bennitt

Re: 1825 through 1831 Pacific Avenue (APN: 137-020-42)

Case No. 12-100159

LEGAL INTEREST OF APPELLANT

Appellant Christopher J. Bennitt ("Bennitt") is the record title holder of the real property located at 1825 through 1831 Pacific Avenue, Stockton, California 95204 (APN: 137-20-42) (the "Property") that is the subject of this appeal.

DISPUTED ORDER AND ACTION

Bennitt appeals the City of Stockton's (the "City") issuance of a Notice and Order to Vacate and Cease and Desist All Operations ("Notice and Order") for the Property, dated June 7, 2017. Bennitt protests the City's finding of building and fire code violations at the Property. Specifically, Bennitt disputes the existence of the violations detailed in the Notice and Order, as well as the nature, scope, severity, and extent of those alleged violations.

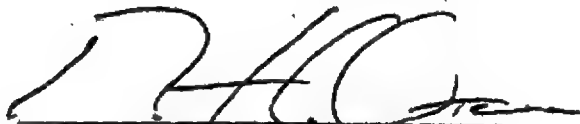
Additionally, Bennitt protests the City's determination that the Property presently exists in such a hazardous and dangerous condition that an emergency exists justifying the City's evacuation of the Property. According to the Notice and Order, the City has been aware of many of the alleged violations for several years. Furthermore, many of the alleged violations were allegedly discovered by the City during its most recent inspection of the Property in April 2017. If the violations allegedly discovered by the City during its April 2017 inspection, and previously, posed an "immediate threat to the life, limb, health, safety, and welfare of the public at large and the occupants of [the] Property," the City would have, and should have, exercised its authority to evacuate the Property immediately. Instead, the City waited until June 7, 2017, or approximately two months, to issue the Notice and Order. This delay undermines the City's determination that the Property is in a dangerous and hazardous condition justifying immediate evacuation. If the Property was truly in such a condition, the City had a duty to act immediately and, by delaying, the City would be admitting that it failed to carry out its duty to protect both

the public at large and the occupants of the Property from being endangered. Ultimately, the City's inaction belies its contention that immediate vacation of the Property was warranted.

Finally, Bennett protests the validity of the Notice and Order insofar as it is defective on its face and fails to contain certain language and express rights required to be stated by the Uniform Code for the Abatement of Dangerous Buildings, as adopted through the City's Municipal Code.

RELIEF REQUESTED

Bennett requests that the Notice and Order be set aside, that immediate reoccupation of the Property be allowed, for an order declaring that (1) the Notice and Order is defective, and (2) that the City's actions were an unlawful and/or improper abuse of power, and for such other relief as the Board determines is appropriate.



ANTHONY L. VIGNOLO
Attorney for Christopher J. Bennett

VERIFICATION

I, Christopher J. Bennett, declare under penalty of perjury under the laws of the State of California that the matters stated in this appeal are true and correct, and that this declaration was executed this 15th day of June 2017 at Stockton, California.



Christopher J. Bennett

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Downey Brand LLP, 3425 Brookside Road, Suite A, Stockton, California, 95219-1757. On June 16, 2017, I served the within document(s):


APPEAL OF CHRISTOPHER J. BENNITT

- ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ **BY E-MAIL:** by transmitting via my electronic service address (bstockman@downeybrand.com) the document(s) listed above to the person(s) at the e-mail address(es) set forth below.
- ☐ **BY MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Stockton, California addressed as set forth below.
- ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.
- ☒ **BY PERSONAL DELIVERY:** by causing personal delivery by Trina Torres-Alejo of the document(s) listed above to the person(s) at the address(es) set forth below.

COMMUNITY DEVELOPMENT DEPARTMENT
345 N. El Dorado Street
Stockton, CA 95202

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 16, 2017, at Stockton, California.



Rebecca Stockman

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Downey Brand LLP, 3425 Brookside Road, Suite A, Stockton, California, 95219-1757. On June 16, 2017, I served the within document(s):

APPEAL OF CHRISTOPHER J. BENNITT

☐

BY FAX: by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☐

BY E-MAIL: by transmitting via my electronic service address (bstockman@downeybrand.com) the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

☐

BY MAIL: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Stockton, California addressed as set forth below.

☐

BY OVERNIGHT MAIL: by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

☒

BY PERSONAL DELIVERY: by causing personal delivery by Trina Torres-Alejo of the document(s) listed above to the person(s) at the address(es) set forth below.

Angel Solis, Deputy City Attorney
CITY OF STOCKTON
425 N. El Dorado Street, 2nd Floor
Stockton, CA 95202-1997

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 16, 2017, at Stockton, California.



Rebecca Stockman

EXHIBIT 13

DOWNEYBRAND

Anthony L. Vignolo
avignolo@downeybrand.com
209.472.3920 Direct
209.472.3921 Fax

Downey Brand LLP
3425 Brookside Road, Suite A
Stockton, CA 95219
209.473.6450 Main
downeybrand.com

July 7, 2017

VIA E-MAIL & U.S. MAIL

John Luebberke, Esq.
City Attorney
Office of the City Attorney
425 N. El Dorado Street, Second Floor
Stockton, CA 95202
John.Luebberke@stocktongov.com

Angel Solis, Esq.
Deputy City Attorney
Office of the City Attorney
425 N. El Dorado Street, Second Floor
Stockton, CA 95202
angel.solis@stocktonca.gov

Re: 1825 Pacific Avenue
APN No. 137-020-42
Case No. 12-00100159

Dear Mr. Luebberke and Mr. Solis:

On behalf of my client, Christopher Bennett, I am writing to address three issues with respect to the City of Stockton's (the "City") "Notice and Order to Vacate and Cease and Desist all Operations" dated June 7, 2017 (the "Order to Vacate"), as set forth more fully below. First, I am requesting that the City release its Order to Vacate and allow the former tenants of the above-referenced property (the "Property") to resume their operations. The issue at hand is not whether there are violations at the Property, but whether any of those violations include "hazardous and dangerous conditions" that pose "an immediate threat to the life, limb, health, safety and welfare" so as to "constitute an emergency" justifying the continued evacuation of the Property under the Uniform Code for the Abatement of Dangerous Buildings (the "Code"). Based upon the factual background of this matter, as well as the enclosed report and opinion of the independent and licensed design professionals retained by my client, it is clear that none of the alleged violations rise to such level. Second, I am requesting confirmation that the City intends to honor my client's specific due process rights afforded by the Code with respect to the pending appeal. Finally, in anticipation of this matter potentially proceeding to litigation, I am requesting that your office advise all personnel who are or have been involved in this matter to preserve and retain all evidence.

No Basis Exists For Continued Evacuation Of The Property

As you are aware, the City and my client entered into an agreement in August, 2016 (the "Agreement"), which, largely due to significant documented delays on the City's part, took almost two years to define, negotiate the scope of terms, and finalize. The Agreement was

negotiated by Deputy City Attorney Neal Lutterman beginning in 2014. After attorney Lutterman resigned his employment, the file was transitioned to Deputy City Attorney Bryan Rome. By email correspondence dated December 13, 2016, attorney Rome advised my office that the file would again be transitioned to Deputy City Attorney Taryn Jones. On March 1, 2017, my office was advised by email correspondence that the file would again be transitioned to Deputy City Attorney Angel Solis. It is quite apparent that these numerous transitions of the file resulted in the City taking inconsistent positions and acting upon misinformation with respect to the Order to Vacate.

The Agreement identifies notices issued to my client, resulting from several City inspections, dating back to 2012 "for work which the CITY claims require building permits and/or removal of structures on the [P]roperty" Pursuant to the Agreement, my client agreed:

[T]o have a set of plans prepared by architect and/or engineers which will identify the current as built condition of the Property and will identify the uses of each portion of the Property as now in use and will identify, as the scope of work, all construction, removal, modification, and/or completion of work on the Property being proposed

Pursuant to the Agreement, the above-referenced plans were to be submitted to a third-party plan check firm by March 6, 2017, but the Agreement did not provide a deadline for such firm to complete its work. Nevertheless, once the plan check firm completed its work, the Agreement provided that all work would thereafter be completed within 180 days of my client obtaining a permit. The City denied my client's written request dated March 8, 2017, for an extension of the plan check requirement without giving any reason for such denial, despite the Agreement expressly contemplating that such extension may be requested and given. The City wholly failed to respond to a letter dated March 27, 2017, from my office requesting that the City reconsider its denial of the requested extension and further explaining:

The deadline for submittal to the third party plan check firm was March 6, 2017. The agreement did not provide any deadline for the third party plan check firm to complete its work. When Mr. Bennett discussed the timing with the third party plan check firms that were considered, the estimates ranged from 45 days to 90 days for them to complete their work. The agreement did provide that Mr. Bennett would respond to comments from the third party plan check firm within 15 business days. Only after Mr. Bennett responded with corrections would the City begin its process of verifying and approving the corrections and the plans and specifications. As now proposed, the submittal will be directly to the City, by April 3, and it will be completely in the City's control when the comments and requests for corrections come back

to Mr. Bennett. Once received, the time limits set out in the agreement would be followed. The result will be that the completion of the project will be ahead of the original schedule set out in the agreement.

By written correspondence dated October 20, 2016, long prior to the expiration of my client's March deadline under the Agreement, Deputy City Attorney Rome requested that my client allow another fire inspection, which in fact occurred shortly thereafter. This request, coupled with the City's subsequent refusal to grant the requested extension contemplated by the Agreement, raised questions as to whether the City had entered into the Agreement in good faith.

Pursuant to a subsequent demand by the City, a further inspection was scheduled for, and occurred, on April 26, 2017, and was the last inspection to date conducted by the City. Attorney Max Steinheimer from my office attended the inspection on behalf of my client, and his observations and discussions with City representatives made clear that there were no imminent life safety issues requiring immediate evacuation of the Property. During the inspection, attorney Steinheimer had a discussion with two deputy City attorneys and requested that, if there were any issues that posed health and safety concerns, they let him know so that they could be fixed immediately. However, no mention of any such health and safety issues was made until my office received a fax from the City on the morning of June 7th advising that the tenants were being required to evacuate immediately due to "hazardous and dangerous conditions located throughout the building" that "pose such an immediate threat to the life, limb, health, safety and welfare of the public at large and the occupants of this property as to constitute an emergency." Also during the April 26th inspection, attorney Steinheimer witnessed a discussion between the fire inspector and the representative of one of the then-tenants, Gusto Wings. The inspector showed the representative issues that needed to be addressed with respect to the "fat fryer," and characterized the issues as important but not having to be addressed immediately. Nevertheless, the issues with the "fat fryer" were subsequently characterized as "dangerous and hazardous" on the Order to Vacate and constituted the primary issues the City relied upon in attempting to justify the immediate evacuation of Gusto Wings.

As you know, at no time during the inspection of April 26, 2017, or any time prior to June 7, 2017, was my office, my client, or any of the tenants informed that any of the issues observed at the inspection, or over the past five years, rose to the level of requiring immediate evacuation of the Property. Instead, the City surprised everyone by serving and posting the Order to Vacate on the morning of June 7th requiring the evacuation of the entirety of the Property on or before 1:00 p.m. on June 9th. Of course, we now know that the City had this entire strategy secretly planned over the course of several months prior to June 7th, during which time the City had clearly spent significant time gathering and preparing materials for a meeting to be held on June 7th with the tenants of the Property and preparing a detailed release for a press conference that afternoon. At the 11:00 a.m. meeting on June 7th between City representatives and the tenants of the Property, City representatives stated that they have been trying to get my client to repair the alleged

violations for over the past 5 years, and they were asked what triggered the need for immediate evacuation. City representatives responded by stating that they have been going through the "regulatory process" necessary for the evacuation ever since the agreement expired in March, and that such process has taken months.

However, there is no such "regulatory process" whatsoever contemplated by the Code, as the City has represented to the public. Pursuant to Section 401.2 of the Code, the City had a few options upon determining what it purportedly believed were dangerous life safety violations, including (1) issuing a notice requiring that repairs commence within sixty (60) days, or (2) in the most extreme circumstance, requiring the immediate evacuation of the Property. The Code allows a "building official" to *immediately* sign that order and red-tag the Property for the immediate protection of the public. If the City truly believed that any alleged violations posed a risk to "life" and "limb" and otherwise constituted an "emergency," it would stand to reason that the City would certainly have done something prior to June 7th. In fact, it would have had a duty to do so for the immediate protection of public safety. If the City was going to wait 42 days before ordering the immediate evacuation of the Property, why not use that time period to inform my client and the tenants that immediate evacuation will be ordered if the repairs are not made by June 7th? For the City to have done nothing—not a single prior suggestion to the tenants that their lives are in danger or that they should prepare to evacuate, not a single notice alerting the tenants that a "regulatory process" was underway and would eventually result in mandatory and immediate evacuation, and not a single word to my office or my client as to any "hazardous and dangerous conditions" the City now claims have existed for years that suddenly require immediate evacuation—is baffling. The City's secret approach of waiting forty-two (42) days after the April inspection before telling anyone and before ordering that the Property be immediately evacuated fully undermines both the purpose of the Code and the City's contention that the alleged violations constitute imminent life safety risks.

Indeed, various media outlets have raised these same questions. A Fox 40 article dated June 8, 2017, quotes City Fire Chief Erik Newman as stating: "Yeah, we could have done things maybe a little bit different, we could." Other statements given by those who participated in the decisions leading up to issuance of the Order to Vacate likewise show that the City acted upon misinformation. For example, in an article published by the Stockton Record on June 7, 2017, Code Enforcement Director Peter Lemos was quoted as stating: "The Empire could have been a catastrophic event if a large event was going on." In fact, the Empire Theatre has been completely closed to the public and all types of private events since late 2016.

Aside from the factual background of this matter undermining the City's position that imminent life safety risks justify evacuation of the Property, three independent and licensed design professionals retained by my client from Avelar & Associates say otherwise. After reviewing the City's entire file on this matter that was provided to my office, including the Order to Vacate, and after conducting a detailed inspection of the Property, those design professionals have opined that "the requirement by the City to completely vacate the building was unnecessarily

heavy-handed based on the issues identified by the City and the conditions we observed" and that "none of our observations rise to the level of an imminent life safety violation which would require either individual tenant spaces or the entire building to be vacated." A copy of their full report is enclosed herewith.

There are two issues that are currently the subject of this matter, and they are entirely separate and distinct. While my client remains ready, willing, and able to work with the City in reaching a resolution as to violations the City claims exist at the Property, the immediate issue—and the sole issue of the pending appeal—as to whether any of those alleged violations present imminent life safety risks that justify the continued evacuation of the Property—can be and should be addressed now. The factual background and the report of licensed independent design professionals make clear that no alleged violations rise to such level, including any work the City contends was done outside of work previously reviewed, inspected, and approved. The Order to Vacate has had a financially devastating impact upon the lives of my client, his former tenants, and their numerous employees, and there is no reason for such order to remain in place. My office has been informed that at least five (5) of the eight (8) former commercial tenants are ready and willing to resume occupancy of the Property. We hope and request that the City will do the right thing, defer to the opinion of three independent and licensed design professionals, and immediately release the Order to Vacate so that those tenants can resume their businesses.

Due Process Rights Afforded By The Code

Section 205.1 of the Uniform Code for the Abatement of Dangerous Buildings (referred to herein as the "Code"), a copy of which is enclosed herewith, addresses the composition of the board which decides appeals, and provides in relevant part:

In order to hear and decide appeals of orders, decisions, or determinations made by the building official relative to the application and interpretation of this code, there shall be and is hereby created a board of appeals consisting of members who are qualified by experience and training to pass upon matters pertaining to building construction and who are not employees of the jurisdiction.

The City adopted the Code through its Municipal Code. Specifically, Section 15.28.010 of the City's Municipal Code is entitled "Adoption of Uniform Code for the Abatement of Dangerous Buildings" and states: "On July 13, 1999, there were filed in the office of the City Clerk, three (3) copies of the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, as published by the International conference of Building Officials. Said code is hereby incorporated in this code by reference. (Prior code § 14-500)." Consistent with the adoption of the Code, it appears the City formed a "Building and Housing Board of Appeals" which, according to the City's official website, has the purpose of hearing "appeals of decisions made by the Building Official ... from aggrieved parties relative to the application of the ... Uniform

Code for Abatement of Dangerous Buildings" Currently, however, the City's official website also states that the Board, which is to consist of 7 members, currently has 7 vacancies. In essence, it appears that the Board does not exist.

By correspondence dated June 26, 2017, Deputy City Attorney Solis stated: "Although not explicitly stated, the City assumes, your client requests a hearing in accordance with Chapter 1.44 of the Stockton Municipal Code." This assumption is incorrect. The appeal filed with the City on behalf of my client was expressly directed to the "Building and Housing Board of Appeals" and thereby contemplated that my client would be afforded his full due process rights under the Code, which the City adopted in 1999 and utilized as the authority for issuing its June 7th Order to Vacate. Section 1.44 of the City's Municipal Code, on the other hand, contemplates a single administrative hearing officer appointed by the City's general manager, and does not remotely afford the level of due process rights required under the Code. The City cannot adopt the Code, rely upon such Code for the authority to take the extreme measure of requiring the immediate evacuation of the Property, and then ignore such Code when it comes to my client's due process rights on appeal from such a decision. Unless written notification is received by my office from the City on or before July 14, 2017, stating otherwise, I will assume that City's "Building and Housing Board of Appeals" is currently nonexistent and that the City does not intend to afford my client the proper due process required pursuant to the Uniform Code for the Abatement of Dangerous Buildings.

Preservation Of Evidence

I want to be abundantly clear—my client's objective is to resolve this matter expeditiously through full cooperation with the City so that my client, his former tenants, and their numerous employees can resume their business operations immediately. While we truly hope that the City shares that objective, the background of this matter, as set forth above, the opinion of our retained independent and licensed design professionals, and other information that we have received to date, have left us with serious concerns as to the City's course of conduct and actual motives underlying the Order to Vacate. Accordingly, we must prepare for the potential of this matter to proceed to litigation.

Thus, please accept this correspondence as formal notice of the City's legal responsibility to preserve and retain all electronic and hard copies of any and all documents of any kind whatsoever (including but not limited to: letters, agreements, contracts, drafts, emails, charts, reports, notes, emails, text messages and the information on any computers that the City has used) which are or may be relevant in any way to the issues raised in this correspondence or the Property. Failure to comply with this notice can result in severe sanctions being imposed by the Court for spoliation of evidence or potential evidence. Cal. Evid. Code § 413; Cal. Code Civ. Proc. § 2023.030. In order to avoid spoliation of evidence, the City will need to preserve the data on the original media and preserve and protect any relevant computer hard drives. Please ensure that such hard drives are preserved in their current state and that all other electronic and hard copy correspondences continue to be preserved.


July 7, 2017
Page 7

We also hereby request that the City immediately initiate a litigation hold with respect to potentially relevant electronic files, documents, data, tangible things, and all other electronic media as set forth herein and to act diligently and in good faith to secure and audit compliance with such litigation hold. The City is further requested to direct its agents and employees handling any aspect of this matter to suspend any policies or protocols that may lead to any destruction of such evidence. We hereby request that the City communicate evidence retention obligations to its employees, officers, and agents with hands-on access to information, documentation, and systems identified herein. Communications about preservation obligations must reach every custodian of discoverable data and must stress the importance of the duty to preserve evidence. Disregarding these obligations may constitute spoliation of evidence.

I look forward to your prompt response.

Very truly yours,

DOWNEY BRAND LLP



Anthony L. Vignolo

ALV/sl

Enclosures

cc: Client



RICHARD AVELAR & ASSOCIATES ARCHITECTS

318 HARRISON STREET, SUITE 103 OAKLAND CA 94607 (510) 893-5501 FAX (510) 893-5874

July 5, 2017

FOR MEDIATION PURPOSES ONLY

Mr. Anthony Vignolo
Downey Brand LLP
3425 Brookside Rd., Suite A
Stockton, CA 95219

Re: *City of Stockton v Bennitt*
Stockton, CA
RA&A Project No. 17206

Subject: *Summary of Preliminary Investigation*

Dear Anthony

Pursuant to your request, Richard Avelar & Associates (RA&A), has completed a preliminary site inspection and evaluation of the purportedly "hazardous and dangerous" conditions as alleged by the City of Stockton (City) within the commercial building located at 1825 - 1831 Pacific Ave., Stockton CA.

On June 20, 2017, our team met on site with building owner Christopher Bennitt to review violations itemized within a June 7, 2017 *Notice and Order to Vacate and Cease and Desist All Operation* (Notice) issued by the City. Our team members include architect, Joe Garcia (#C26356), code consultant, Lonnie Haughton (#B880924), general contractor, Tim Stokes (#B403456) and designer, Elizabeth Harris.

At the time of our inspection, all tenant spaces had been vacated and almost all of the contents, including portable improvements, supplies, fixtures and equipment had been removed. As a consequence, many of the issues itemized in the Notice were not evident. While some building code and standards violations were noted, we did not observe any conditions that would constitute an imminent life safety concern.

The Notice is itemized by the address of each of nine tenant spaces and includes two violation categories: "Dangerous Conditions" and "Hazardous Conditions". For each of these conditions, the City has issued a repair recommendation. In addition to specific conditions that the City documented in the Notice, the City also asserted that the failures to comply with previous violation notices as well as a stipulation agreement constitutes a basis to vacate.

Principals.....

Richard Avelar, AIA, G.C. & Founder

Daniel Chekene, AIA
Joel Agnello, AIA
Joseph G. Garcia, AIA
Gary M. Garcia, AIA
David M. Field, AIA
Timothy Stokes, G.C.
Steven T. Penland, G.C.
Ken Kosloff, G.C.
Lonnie Haughton, G.C.
Eric Archuleta, AIA, G.C.

Shareholders

Andrew Thias, G.C.
Greg Cole, G.C.
Kathleen P. Carwell
Marnie Collier, G.C.

Architects & General Contractors.....

Manreen Behrendt, AIA
Claudia Falconer, AIA
Ed Vazquez, G.C.
Jack Canada, G.C.
Joseph A. Fraiser, G.C.
Bobby Whitworth Jr. G.C.
E. David Lopez, G.C.
Jared M. Orozco, G.C.
Hai G. Luu, G.C.
Rachel Scott, G.C.
Craig Walker, G.C.

The City cites the 1997 *Uniform Code for the Abatement of Dangerous Buildings* as the standard for evaluating the building. Section 302 of this Code itemizes 18 categories which define a "Dangerous Building" insofar as, "...such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered". Specific examples from the Code are useful in understanding the nature of building defects that warrant a building to be vacated because of dangerous conditions:

- 302.2 "Whenever the walking surface of any isle...is so warped, worn, loose, torn or otherwise unsafe..."
- 302.4 "Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe..."
- 302.11 "Whenever the building or structure, exclusive of the foundation, shows 33% or more damage or deterioration of its supporting member or members..."

We did not observe conditions that fall into these types of categories. Many of the issues identified in the Notice relate to the Theatre and storage spaces which have been largely unused since 2012 and unoccupied and not used since last year.

The approximate 35,000 square foot building, named the Miracle Mile Promenade Building, is comprised of two parts: the original slab on grade concrete structure that was built originally as a movie theatre and a 1970's concrete block addition at the south end of the original building. Both sections were built as single story structures with some mezzanine areas in the original building.

We have performed a preliminary review of plans and permits relating to recent building improvements. In 2005, a building permit was issued based on plans for "Phase 1 Cinema and Concession Area/Lobby", which details scope for the original building to include 1) demise three new spaces at the south side of the original building, 2) divide the theatre at the northwest side of the building into a smaller theatre space and storage space and 3) remodel existing theatre lobby to provide accessible entrance and accessible bathrooms.

In 2006, another building permit was issued based on plans for "Phase 2 Conversion to Future Retail Spaces" which details scope for the concrete block addition at the south end of the building. The scope of work for Phase 2 included 1) the conversion of three theatre spaces at the south end of the building into commercial and restaurant spaces, 2) add a second floor and required exits, 3) provide new storefront entry openings in exterior walls, 4) redesign the parking lot and 5) provide automatic fire sprinkler system.

The intent of these two phases of work was to convert the existing movie theatre building into mixed use occupancy. The plans were designed by architect, Eric Merlo under the 2001 California Building Code. Other plans we reviewed included tenant improvement plans for restaurants - Cibo di Vino and Basil's - at the south end of the building and other various plumbing and electrical permits. All of these sets of plans we've reviewed include code and egress analysis, rated wall construction detailing and information relating to ADA accessibility. Additionally, the Phase 2 plans include engineered structural plans and the tenant improvement plans include engineered plumbing, mechanical and electrical plans.

Project documentation shows that there is a history of notice of violations from the City dating back to 2012. Based on our preliminary review of these notices, many of the original issues have been resolved, some are ongoing and some new issues have been added and are reflected in the June 7, 2017 Notice.

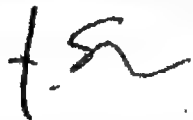
We are in the process of developing an itemized response to each violation in the Notice. Based on our preliminary review, however, while some code violations were observed, none of our observations rise to the level of an imminent life safety violation which would require either individual tenant spaces or the entire building to be vacated.

It is our opinion that the eight commercial spaces could be re-occupied with some minor modifications, such as clearing incidental obstructions from exit pathways, testing and repairing exit & emergency lights, abandoning electrical devices serviced by extension cords, inspecting & re-charging fire extinguishers, and installing cover plates on exposed electrical devices.

We believe that the building is safe to occupy and the requirement by the City to completely vacate the building was unnecessarily heavy-handed based on the issues identified by the City and the conditions we observed. This position is supported by the timeframe of the City's inspection process. The basis for the Notice was developed in a site inspection by the City on April 24, 2017, but the Notice wasn't issued for more than six weeks later on June 7th. If imminent life safety conditions existed at the time of the City's inspection, the time to issue the Notice was the day of or the day after their April inspection.

This preliminary report, including any recommendations, is based upon limited field observations, access to the site, and represents the opinion of the undersigned. It is possible that unknown and/or hidden conditions may exist which would influence this report, its conclusions and recommendations. The undersigned must, therefore, expressly disclaim any liability to those who may rely upon this report in fashioning, performing, or accepting remedial work without our active involvement during the preparation of remedial details and specifications, on-site inspection of the work progress, and acceptance of such work.

Sincerely,
Richard Avelar & Associates



Timothy J. Stokes, G.C.
Principal Construction Consultant

cc: Joe Garcia, RA&A
Lonnie Haughton, RA&A
Elizabeth Harris, RA&A

1997

75th

Anniversary

1922 **ICBO** 1997

UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS



1997

**UNIFORM CODE
FOR THE ABATEMENT
OF DANGEROUS
BUILDINGS™**



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INTERNATIONAL CODE COUNCIL

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Preface

The provisions of this code were developed to afford jurisdictions reasonable procedures for the classification and abatement of dangerous buildings.

This code is designed to be compatible with the *Uniform Building Code*™ and the *Uniform Housing Code*™. While the Housing Code is applicable only to residential buildings, the *Uniform Code for the Abatement of Dangerous Buildings*™ is designed to apply to all types of buildings and structures. The notices, orders and appeals procedures specified have been found to be workable and are referenced by the *Uniform Building Code*.

If properly followed, the provisions of this code will provide the building official with the proper legal steps in abating dilapidated, defective buildings which endanger life, health, property and public safety within concepts of fair play and justice.

CODES AND RELATED PUBLICATIONS

The International Conference of Building Officials (ICBO) publishes a family of codes, each correlated with the *Uniform Building Code*™ to provide jurisdictions with a complete set of building-related regulations for adoption. Some of these codes are published in affiliation with other organizations such as the International Fire Code Institute (IFCI) and the International Code Council (ICC). Reference materials and related codes also are available to improve knowledge of code enforcement and administration of building inspection programs. Publications and products are continually being added, so inquiries should be directed to Conference headquarters for a listing of available products. Many codes and references are also available on CD-ROM or floppy disk. These are denoted by (*). The following publications and products are available from ICBO:

CODES

***Uniform Building Code, Volumes 1, 2 and 3.** The most widely adopted model building code in the United States, the performance-based *Uniform Building Code* is a proven document, meeting the needs of government units charged with the enforcement of building regulations. Volume 1 contains administrative, fire- and life-safety and field inspection provisions; Volume 2 contains structural engineering design provisions; and Volume 3 contains material, testing and installation standards.

***Uniform Mechanical Code™.** Provides a complete set of requirements for the design, construction, installation and maintenance of heating, ventilating, cooling and refrigeration systems; incinerators and other heat-producing appliances.

International Plumbing Code™. Provides consistent and technically advanced requirements that can be used across the country to provide comprehensive regulations of modern plumbing systems. Setting minimum regulations for plumbing facilities in terms of performance objectives, the IPC provides for the acceptance of new and innovative products, materials and systems.

International Private Sewage Disposal Code™. Provides flexibility in the development of safety and sanitary individual sewage disposal systems and includes detailed provisions for all aspects of design, installation and inspection of private sewage disposal systems.

International Mechanical Code™. Establishes minimum regulations for mechanical systems using prescriptive and performance-related provisions. It is founded on broad-based principles that make possible the use of new materials and new mechanical designs.

Uniform Zoning Code™. This code is dedicated to intelligent community development and to the benefit of the public welfare by providing a means of promoting uniformity in zoning laws and enforcement.

***Uniform Fire Code™, Volumes 1 and 2.** The premier model fire code in the United States, the *Uniform Fire Code* sets forth provisions necessary for fire prevention and fire protection. Published by the International Fire Code Institute, the *Uniform Fire Code* is endorsed by the Western Fire Chiefs Association, the International Association of Fire Chiefs and ICBO. Volume 1 contains code provisions compatible with the *Uniform Building Code*, and Volume 2 contains standards referenced from the code provisions.

***Urban-Wildland Interface Code™.** Promulgated by IFCI, this code regulates both land use and the built environment in designated urban-wildland interface areas. This newly developed code is the only model code that bases construction requirements on the fire-hazard severity exposed to the structure. Developed under a grant from the Federal Emergency Management Agency, this code is the direct result of hazard mitigation meetings held after devastating wildfires.

Uniform Housing Code™. Provides complete requirements affecting conservation and rehabilitation of housing. Its regulations are compatible with the *Uniform Building Code*.

Uniform Code for the Abatement of Dangerous Buildings™. A code compatible with the *Uniform Building Code* and the *Uniform Housing Code* which provides equitable remedies consistent with other laws for the repair, vacation or demolition of dangerous buildings.

Uniform Sign Code™. Dedicated to the development of better sign regulation, its requirements pertain to all signs and sign construction attached to buildings.

Uniform Administrative Code™. This code covers administrative areas in connection with adoption of the *Uniform Building Code*,

Uniform Mechanical Code and related codes. It contains provisions which relate to site preparation, construction, alteration, moving, repair and use and occupancies of buildings or structures and building service equipment, including plumbing, electrical and mechanical regulations. The code is compatible with the administrative provisions of all codes published by the Conference.

Uniform Building Security Code™. This code establishes minimum standards to make dwelling units resistant to unlawful entry. It regulates swinging doors, sliding doors, windows and hardware in connection with dwelling units of apartment houses or one- and two-family dwellings. The code gives consideration to the concerns of police, fire and building officials in establishing requirements for resistance to burglary which are compatible with fire and life safety.

Uniform Code for Building Conservation™. A building conservation guideline presented in code format which will provide a community with the means to preserve its existing buildings while achieving appropriate levels of safety. It is formatted in the same manner as the *Uniform Building Code*, is compatible with other Uniform Codes, and may be adopted as a code or used as a guideline.

Dwelling Construction under the Uniform Building Code™. Designed primarily for use in home building and apprentice training, this book contains requirements applicable to the construction of one- and two-story dwellings based on the requirements of the *Uniform Building Code*. Available in English or Spanish.

Dwelling Construction under the Uniform Mechanical Code™. This publication is for the convenience of the homeowner or contractor interested in installing mechanical equipment in a one- or two-family dwelling in conformance with the *Uniform Mechanical Code*.

Supplements to UBC and related codes. Published in the years between editions, the Supplements contain all approved changes, plus an analysis of those changes.

Uniform Building Code—1927 Edition. A special 60th anniversary printing of the first published *Uniform Building Code*.

One and Two Family Dwelling Code. Promulgated by ICC, this code eliminates conflicts and duplications among the model codes to achieve national uniformity. Covers mechanical and plumbing requirements as well as construction and occupancy.

Application and Commentary on the One and Two Family Dwelling Code. An interpretative commentary on the *One and Two Family Dwelling Code* intended to enhance uniformity of interpretation and application of the code nationwide. Developed by the three model code organizations, this document includes numerous illustrations of code requirements and the rationale for individual provisions.

Model Energy Code. This code includes minimum requirements for effective use of energy in the design of new buildings and structures and additions to existing buildings. It is based on American Society of Heating, Refrigeration and Air-conditioning Engineers Standard 90A-1980 and was originally developed jointly by ICBO, BOCA, SBCCI and the National Conference of States on Building Codes and Standards under a contract funded by the United States Department of Energy. The code is now maintained by ICC and is adopted by reference in the *Uniform Building Code*.

National Electrical Code®. The electrical code used throughout the United States. Published by the National Fire Protection Association, it is an indispensable aid to every electrician, contractor, architect, builder, inspector and anyone who must specify or certify electrical installations.

TECHNICAL REFERENCES AND EDUCATIONAL MATERIALS

Analysis of Revisions to the Uniform Codes™. An analysis of changes between the previous and new editions of the Uniform Codes is provided. Changes between code editions are noted either at the beginning of chapters or in the margins of the code text.

***Handbook to the Uniform Building Code.** The handbook is a completely detailed and illustrated commentary on the *Uniform Building Code*, tracing historical background and rationale of the codes through the current edition. Also included are numerous drawings and figures clarifying the application and intent of the code provisions. Also available in electronic format.

***Handbook to the Uniform Mechanical Code.** An indispensable tool for understanding the provisions of the current UMC, the handbook traces the historical background and rationale behind the UMC provisions, includes 160 figures which clarify the intent and application of the code, and provides a chapter-by-chapter analysis of the UMC.

***Uniform Building Code Application Manual.** This manual discusses sections of the *Uniform Building Code* with a question-and-answer format, providing a comprehensive analysis of the intent of the code sections. Most sections include illustrative examples. The manual is in loose-leaf format so that code applications published in *Building Standards* magazine may be inserted. Also available in electronic format.

***Uniform Mechanical Code Application Manual.** As a companion document to the *Uniform Mechanical Code*, this manual provides a comprehensive analysis of the intent of a number of code sections in an easy-to-use question-and-answer format. The manual is available in a loose-leaf format and includes illustrative examples for many code sections.

***Uniform Fire Code Applications Manual.** This newly developed manual provides questions and answers regarding UPC provisions. A comprehensive analysis of the intent of numerous code sections, the manual is in a loose-leaf format for easy insertion of code applications published in IPCI's *Fire Code Journal*.

Quick-Reference Guide to the Occupancy Requirements of the 1997 UBC. Code requirements are compiled in this publication by occupancy groups for quick access. These tabulations assemble requirements for each occupancy classification in the code. Provisions, such as fire-resistive ratings for occupancy separations in Table 3-B, exterior wall and opening protection requirements in Table 5-A-1, and fire-resistive ratings for types of construction in Table 6-A, are tabulated for quick reference and comparison.

Plan Review Manual. A practical text that will assist and guide both the field inspector and plan reviewer in applying the code requirements. This manual covers the nonstructural and basic structural aspects of plan review.

Field Inspection Manual. An important fundamental text for courses of study at the community college and trade or technical school level. It is an effective text for those studying building construction or architecture and includes sample forms and checklists for use in the field.

Building Department Administration. An excellent guide for improvement of skills in departmental management and in the enforcement and application of the Building Code and other regulations administered by a building inspection department. This textbook will also be a valuable aid to instructors, students and those in related professional fields.

Building Department Guide to Disaster Mitigation. This new, expanded guide is designed to assist building departments in developing or updating disaster mitigation plans. Subjects covered include guidelines for damage mitigation, disaster-response management, immediate response, mutual aid and inspections, working with the media, repair and recovery policies, and public information bulletins. This publication is a must for those involved in preparing for and responding to disaster.

Building Official Management Manual. This manual addresses the unique nature of code administration and the managerial duties of the building official. A supplementary insert addresses the budgetary

and financial aspects of a building department. It is also an ideal resource for those preparing for the management module of the CABO Building Official Certification Examination.

Legal Aspects of Code Administration. A manual developed by the three model code organizations to inform the building official on the legal aspects of the profession. The text is written in a logical sequence with explanation of legal terminology. It is designed to serve as a refresher for those preparing to take the legal module of the CABO Building Official Certification Examination.

Illustrated Guide to Conventional Construction Provisions of the UBC. This comprehensive guide and commentary provides detailed explanations of the conventional construction provisions in the UBC, including descriptive discussions and illustrated drawings to convey the prescriptive provisions related to wood-frame construction.

Introduction to the Uniform Building Code. A workbook that provides an overview of the basics of the UBC.

Uniform Building Code Update Workbook. This manual addresses many of the changes to the administrative, fire- and life-safety, and inspection provisions appearing in the UBC.

UMC Workbook. Designed for independent study or use with instructor-led programs based on the *Uniform Mechanical Code*, this comprehensive study guide consists of 16 learning sessions, with the first two sessions reviewing the purpose, scope, definitions and administrative provisions and the remaining 14 sessions progressively exploring the requirements for installing, inspecting and maintaining heating, ventilating, cooling and refrigeration systems.

UBC Field Inspection Workbook. A comprehensive workbook for studying the provisions of the UBC. Divided into 12 sessions, this workbook focuses on the UBC combustible construction requirements for the inspection of wood-framed construction.

Concrete Manual. A publication for individuals seeking an understanding of the fundamentals of concrete field technology and inspection practices. Of particular interest to concrete construction inspectors, it will also benefit employees of concrete producers, contractors, testing and inspection laboratories and material suppliers.

Reinforced Concrete Masonry Construction Inspector's Handbook. A comprehensive information source written especially for masonry inspection covering terminology, technology, materials, quality control, inspection and standards. Published jointly by ICBO and the Masonry Institute of America.

You Can Build It! Sponsored by ICBO in cooperation with CABO, this booklet contains information and advice to aid "do-it-yourselfers" with building projects. Provides guidance in necessary procedures such as permit requirements, codes, plans, cost estimation, etc.

Guidelines for Manufactured Housing Installations. A guideline in code form implementing the *Uniform Building Code* and its companion code documents to regulate the permanent installation of a manufactured home on a privately owned, nonrental site. A commentary is included to explain specific provisions, and codes applying to each component part are defined.

Accessibility Reference Guide. This guide is a valuable resource for architects, interior designers, plan reviewers and others who design and enforce accessibility provisions. Features include accessibility requirements, along with detailed commentary and graphics to clarify the provisions; cross-references to other applicable sections of the UBC and the Americans with Disabilities Act Accessibility Guidelines; a checklist of UBC provisions on access and usability requirements; and many other useful references.

Educational and Technical Reference Materials. The Conference has been a leader in the development of texts and course material to assist in the educational process. These materials include vital information necessary for the building official and subordinates in carrying out their responsibilities and have proven to be excellent references in connection with community college curricula and higher-level courses in the field of building construction technology and inspection and in the administration of building departments. Included are plan review checklists for structural, nonstructural, mechanical and fire-safety provisions and a full line of videotapes and automated products.

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Chapter 1 TITLE AND SCOPE

SECTION 101 — TITLE

These regulations shall be known as the *Uniform Code for the Abatement of Dangerous Buildings*, may be cited as such, and will be referred to herein as "this code."

SECTION 102 — PURPOSE AND SCOPE

102.1 Purpose. It is the purpose of this code to provide a just, equitable and practicable method, to be cumulative with and in addition to any other remedy provided by the Building Code, Housing Code or otherwise available by law, whereby buildings or structures which from any cause endanger the life, limb, health, morals, property, safety or welfare of the general public or their occupants may be required to be repaired, vacated or demolished.

The purpose of this code is not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this code.

102.2 Scope. The provisions of this code shall apply to all dangerous buildings, as herein defined, which are now in existence or which may hereafter become dangerous in this jurisdiction.

SECTION 103 — ALTERATIONS, ADDITIONS AND REPAIRS

All buildings or structures which are required to be repaired under the provisions of this code shall be subject to the provisions of Section 3403 of the Building Code.

Chapter 2 ENFORCEMENT

SECTION 201 — GENERAL

201.1 Administration. The building official is hereby authorized to enforce the provisions of this code.

The building official shall have the power to render interpretations of this code and to adopt and enforce rules and supplemental regulations in order to clarify the application of its provisions. Such interpretations, rules and regulations shall be in conformity with the intent and purpose of this code.

201.2 Inspections. The health officer, the fire marshal and the building official are hereby authorized to make such inspections and take such actions as may be required to enforce the provisions of this code.

201.3 Right of Entry. When it is necessary to make an inspection to enforce the provisions of this code, or when the building official or the building official's authorized representative has reasonable cause to believe that there exists in a building or upon a premises a condition which is contrary to or in violation of this code which makes the building or premises unsafe, dangerous or hazardous, the building official may enter the building or premises at reasonable times to inspect or to perform the duties imposed by this code, provided that if such building or premises be occupied that credentials be presented to the occupant and entry requested. If such building or premises be unoccupied, the building official shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If entry is refused, the building official shall have recourse to the remedies provided by law to secure entry.

"Authorized representative" shall include the officers named in Section 201.2 and their authorized inspection personnel.

SECTION 202 — ABATEMENT OF DANGEROUS BUILDINGS

All buildings or portions thereof which are determined after inspection by the building official to be dangerous as defined in this code are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedure specified in Section 401 of this code.

SECTION 203 — VIOLATIONS

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this code.

SECTION 204 — INSPECTION OF WORK

All buildings or structures within the scope of this code and all construction or work for which a permit is required shall be subject to inspection by the building official in accordance with and in the manner provided by this code and Sections 108 and 1701 of the Building Code.

SECTION 205 — BOARD OF APPEALS

205.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretations of this code, there shall be and is hereby created a board of appeals consisting of members who are qualified by experience and training to pass upon matters pertaining to building construction and who are not employees of the jurisdiction. The building official shall be an ex officio member and shall act as secretary to said board but shall have no vote upon any matter before the board. The board of appeals shall be appointed by the governing body and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant, with a duplicate copy to the building official. Appeals to the board shall be processed in accordance with the provisions contained in Section 501 of this code. Copies of all rules or regulations adopted by the board shall be delivered to the building official, who shall make them freely accessible to the public.

205.2 Limitations of Authority. The board of appeals shall have no authority relative to interpretation of the administrative provisions of this code nor shall the board be empowered to waive requirements of this code.

Chapter 3 DEFINITIONS

SECTION 301 — GENERAL

For the purpose of this code, certain terms, phrases, words and their derivatives shall be construed as specified in either this chapter or as specified in the Building Code or the Housing Code. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used. *Webster's Third New International Dictionary of the English Language, Unabridged*, copyright 1986, shall be construed as providing ordinary accepted meanings. Words used in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine.

BUILDING CODE is the *Uniform Building Code* promulgated by the International Conference of Building Officials, as adopted by this jurisdiction.

DANGEROUS BUILDING is any building or structure deemed to be dangerous under the provisions of Section 302 of this code.

HOUSING CODE is the *Uniform Housing Code* promulgated by the International Conference of Building Officials, as adopted by this jurisdiction.

SECTION 302 — DANGEROUS BUILDING

For the purpose of this code, any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered.

1. Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
2. Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.
3. Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than one and one half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location.
4. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location.
5. Whenever any portion or member or appurtenance thereof is likely to fall, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.
6. Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one half of that specified in the Building Code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the Building Code for such buildings.

7. Whenever any portion thereof has cracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.

8. Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.

9. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

10. Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one third of the base.

11. Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its nonsupporting members, enclosing or outside walls or coverings.

12. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become (i) an attractive nuisance to children; (ii) a harbor for vagrants, criminals or immoral persons; or as to (iii) enable persons to resort thereto for the purpose of committing unlawful or immoral acts.

13. Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction, as specified in the Building Code or Housing Code, or of any law or ordinance of this state or jurisdiction relating to the condition, location or structure of buildings.

14. Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any nonsupporting part, member or portion less than 50 percent, or in any supporting part, member or portion less than 66 percent of the (i) strength, (ii) fire-resisting qualities or characteristics, or (iii) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.

15. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the health officer to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.

16. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the fire marshal to be a fire hazard.

17. Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.

18. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public,

Chapter 4

NOTICES AND ORDERS OF BUILDING OFFICIAL

SECTION 401 — GENERAL

401.1 Commencement of Proceedings. When the building official has inspected or caused to be inspected any building and has found and determined that such building is a dangerous building, the building official shall commence proceedings to cause the repair, vacation or demolition of the building.

401.2 Notice and Order. The building official shall issue a notice and order directed to the record owner of the building. The notice and order shall contain:

1. The street address and a legal description sufficient for identification of the premises upon which the building is located.
2. A statement that the building official has found the building to be dangerous with a brief and concise description of the conditions found to render the building dangerous under the provisions of Section 302 of this code.
3. A statement of the action required to be taken as determined by the building official.

3.1 If the building official has determined that the building or structure must be repaired, the order shall require that all required permits be secured therefor and the work physically commenced within such time (not to exceed 60 days from the date of the order) and completed within such time as the building official shall determine is reasonable under all of the circumstances.

3.2 If the building official has determined that the building or structure must be vacated, the order shall require that the building or structure shall be vacated within a time certain from the date of the order as determined by the building official to be reasonable.

3.3 If the building official has determined that the building or structure must be demolished, the order shall require that the building be vacated within such time as the building official shall determine is reasonable (not to exceed 60 days from the date of the order); that all required permits be secured therefor within 60 days from the date of the order; and that the demolition be completed within such time as the building official shall determine is reasonable.

4. Statements advising that if any required repair or demolition work (without vacation also being required) is not commenced within the time specified, the building official (i) will order the building vacated and posted to prevent further occupancy until the work is completed, and (ii) may proceed to cause the work to be done and charge the costs thereof against the property or its owner.

5. Statements advising (j) that any person having any record title or legal interest in the building may appeal from the notice and order or any action of the building official to the board of appeals, provided the appeal is made in writing as provided in this code and filed with the building official within 30 days from the date of service of such notice and order; and (ii) that failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter.

401.3 Service of Notice and Order. The notice and order, and any amended or supplemental notice and order, shall be served upon the record owner and posted on the property; and one copy thereof shall be served on each of the following if known to the

building official or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the building official to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this section.

401.4 Method of Service. Service of the notice and order shall be made upon all persons entitled therein either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested, to each such person at their address as it appears on the last equalized assessment roll of the county or as known to the building official. If no address of any such person so appears or is known to the building official, then a copy of the notice and order shall be so mailed, addressed to such person, at the address of the building involved in the proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

401.5 Proof of Service. Proof of service of the notice and order shall be certified to at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the time, date and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail shall be affixed to the copy of the notice and order retained by the building official.

SECTION 402 — RECORDATION OF NOTICE AND ORDER

If compliance is not had with the order within the time specified therein, and no appeal has been properly and timely filed, the building official shall file in the office of the county recorder a certificate describing the property and certifying (i) that the building is a dangerous building and (ii) that the owner has been so notified. Whenever the corrections ordered shall thereafter have been completed or the building demolished so that it no longer exists as a dangerous building on the property described in the certificate, the building official shall file a new certificate with the county recorder certifying that the building has been demolished or all required corrections have been made so that the building is no longer dangerous, whichever is appropriate.

SECTION 403 — REPAIR, VACATION AND DEMOLITION

The following standards shall be followed by the building official (and by the board of appeals if an appeal is taken) in ordering the repair, vacation or demolition of any dangerous building or structure:

1. Any building declared a dangerous building under this code shall be made to comply with one of the following:

1.1 The building shall be repaired in accordance with the current building code or other current code applicable to the type of substandard conditions requiring repair; or

1.2 The building shall be demolished at the option of the building owner; or

1.3 If the building does not constitute an immediate danger to the life, limb, property or safety of the public it may be vacated, secured and maintained against entry.

2. If the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or its occupants, it shall be ordered to be vacated.

SECTION 404 — NOTICE TO VACATE

404.1 Posting. Every notice to vacate shall, in addition to being served as provided in Section 401.3, be posted at or upon each exit of the building and shall be in substantially the following form:

**DO NOT ENTER
UNSAFE TO OCCUPY**

It is a misdemeanor to occupy this building, or to remove or deface this notice.

Building Official

..... of

404.2 Compliance. Whenever such notice is posted, the building official shall include a notification thereof in the notice and order issued under Section 401.2, reciting the emergency and specifying the conditions which necessitate the posting. No person shall remain in or enter any building which has been so posted, except that entry may be made to repair, demolish or remove such building under permit. No person shall remove or deface any such notice after it is posted until the required repairs, demolition or removal have been completed and a certificate of occupancy issued pursuant to the provisions of the Building Code.

Chapter 5 APPEAL

SECTION 501 — GENERAL

501.1 Form of Appeal. Any person entitled to service under Section 401.3 may appeal from any notice and order or any action of the building official under this code by filing at the office of the building official a written appeal containing:

1. A heading in the words: "Before the board of appeals of the of"
2. A caption reading: "Appeal of, " giving the names of all appellants participating in the appeal.
3. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice and order.
4. A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant.
5. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside.
6. The signatures of all parties named as appellants and their official mailing addresses.
7. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

The appeal shall be filed within 30 days from the date of the service of such order or action of the building official; provided, however, that if the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or adjacent property and is ordered vacated and is posted in accordance with Section 404, such appeal shall be filed within 10 days from the date of the service of the notice and order of the building official.

501.2 Processing of Appeal. Upon receipt of any appeal filed pursuant to this section, the building official shall present it at the next regular or special meeting of the board of appeals.

501.3 Scheduling and Noticing Appeal for Hearing. As soon as practicable after receiving the written appeal, the board of appeals shall fix a date, time and place for the hearing of the appeal by the board. Such date shall not be less than 10 days nor more than 60 days from the date the appeal was filed with the building official. Written notice of the time and place of the hearing shall be given at least 10 days prior to the date of the hearing to each appellant by the secretary of the board either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal.

SECTION 502 — EFFECT OF FAILURE TO APPEAL

Failure of any person to file an appeal in accordance with the provisions of Section 501 shall constitute a waiver of the right to an administrative hearing and adjudication of the notice and order or any portion thereof.

SECTION 503 — SCOPE OF HEARING ON APPEAL

Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.

SECTION 504 — STAYING OF ORDER UNDER APPEAL

Except for vacation orders made pursuant to Section 404, enforcement of any notice and order of the building official issued under this code shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

Chapter 6

PROCEDURES FOR CONDUCT OF HEARING APPEALS

SECTION 601 — GENERAL

601.1 Hearing Examiners. The board may appoint one or more hearing examiners or designate one or more of its members to serve as hearing examiners to conduct the hearings. The examiner hearing the case shall exercise all powers relating to the conduct of hearings until it is submitted to the board for decision.

601.2 Record. A record of the entire proceedings shall be made by tape recording or by any other means of permanent recording determined to be appropriate by the board.

601.3 Reporting. The proceedings at the hearing shall also be reported by a phonographic reporter if requested by any party thereto. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefor. Such fees may be established by the board, but shall in no event be greater than the cost involved.

601.4 Continuances. The board may grant continuances for good cause shown; however, when a hearing examiner has been assigned to such hearing, no continuances may be granted except by the examiner for good cause shown so long as the matter remains before the examiner.

601.5 Oaths—Certification. In any proceedings under this chapter, the board, any board member, or the hearing examiner has the power to administer oaths and affirmations and to certify to official acts.

601.6 Reasonable Dispatch. The board and its representatives shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.

SECTION 602 — FORM OF NOTICE OF HEARING

The notice to appellant shall be substantially in the following form, but may include other information:

"You are hereby notified that a hearing will be held before (the board of appeals or name of hearing examiner) at on the day of 19, at the hour, upon the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by filing an affidavit therefor with (board of appeals or name of hearing examiner)."

SECTION 603 — SUBPOENAS

603.1 Filing of Affidavit. The board or examiner may obtain the issuance and service of a subpoena for the attendance of witnesses or the production of other evidence at a hearing upon the request of a member of the board or upon the written demand of any party. The issuance and service of such subpoenas shall be obtained upon the filing of an affidavit therefor which states the name and address of the proposed witness; specifies the exact things sought to be produced and the materiality thereof in detail to the issues involved; and states that the witness has the desired

things in possession or under control. A subpoena need not be issued when the affidavit is defective in any particular.

603.2 Cases Referred to Examiner. In cases where a hearing is referred to an examiner, all subpoenas shall be obtained through the examiner.

603.3 Penalties. Any person who refuses without lawful excuse to attend any hearing or to produce material evidence which the person possesses or controls as required by any subpoena served upon such person as provided for herein shall be guilty of a misdemeanor.

SECTION 604 — CONDUCT OF HEARING

604.1 Rules. Hearings need not be conducted according to the technical rules relating to evidence and witnesses.

604.2 Oral Evidence. Oral evidence shall be taken only on oath or affirmation.

604.3 Hearsay Evidence. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.

604.4 Admissibility of Evidence. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

604.5 Exclusion of Evidence. Irrelevant and unduly repetitious evidence shall be excluded.

604.6 Rights of Parties. Each party shall have these rights, among others:

1. To call and examine witnesses on any matter relevant to the issues of the hearing;
2. To introduce documentary and physical evidence;
3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
4. To impeach any witness regardless of which party first called the witness to testify;
5. To rebut the evidence; and
6. To be represented by anyone who is lawfully permitted to do so.

604.7 Official Notice.

604.7.1 What may be noticed. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or of official records of the board or departments and ordinances of the city or rules and regulations of the board.

604.7.2 Parties to be notified. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.

604.7.3 Opportunity to refute. Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the board or hearing examiner.

604.7.4 Inspection of the premises. The board or the hearing examiner may inspect any building or premises involved in the appeal during the course of the hearing, provided that (i) notice of such inspection shall be given to the parties before the inspection is made, (ii) the parties are given an opportunity to be present during the inspection, and (iii) the board or the hearing examiner shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the board or hearing examiner.

SECTION 605 — METHOD AND FORM OF DECISION

605.1 Hearing before Board itself. When a contested case is heard before the board itself, a member thereof who did not hear the evidence or has not read the entire record of the proceedings shall not vote on or take part in the decision.

605.2 Hearing before Examiner. If a contested case is heard by a hearing examiner alone, the examiner shall within a reasonable time (not to exceed 90 days from the date the hearing is closed) submit a written report to the board. Such report shall contain a brief summary of the evidence considered and state the examiner's findings, conclusions and recommendations. The report also shall contain a proposed decision in such form that it may be adopted by the board as its decision in the case. All examiner's reports filed with the board shall be matters of public record. A copy of each such report and proposed decision shall be mailed to each party on the date they are filed with the board.

605.3 Consideration of Report by Board—Notice. The board shall fix the time, date and place to consider the examiner's report and proposed decision. Notice thereof shall be mailed to each interested party not less than five days prior to the date fixed, unless it is otherwise stipulated by all of the parties.

605.4 Exceptions to Report. Not later than two days before the date set to consider the report, any party may file written exceptions to any part or all of the examiner's report and may attach thereto a proposed decision together with written argument in support of such decision. By leave of the board, any party may present oral argument to the board.

605.5 Disposition by the Board. The board may adopt or reject the proposed decision in its entirety, or may modify the proposed decision.

605.6 Proposed Decision Not Adopted. If the proposed decision is not adopted as provided in Section 605.5, the board may decide the case upon the entire record before it, with or without taking additional evidence, or may refer the case to the same or another hearing examiner to take additional evidence. If the case is reassigned to a hearing examiner, the examiner shall prepare a report and proposed decision as provided in Section 605.2 hereof after any additional evidence is submitted. Consideration of such proposed decision by the board shall comply with the provisions of this section.

605.7 Form of Decision. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to the appellant personally or sent by certified mail, postage prepaid, return receipt requested.

605.8 Effective Date of Decision. The effective date of the decision shall be as stated therein.

Chapter 7

ENFORCEMENT OF THE ORDER OF THE BUILDING OFFICIAL OR THE BOARD OF APPEALS

SECTION 701 — COMPLIANCE

701.1 General. After any order of the building official or the board of appeals made pursuant to this code shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order. Any such person who fails to comply with any such order is guilty of a misdemeanor.

701.2 Failure to Obey Order. If, after any order of the building official or board of appeals made pursuant to this code has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the building official may (i) cause such person to be prosecuted under Section 701.1 or (ii) institute any appropriate action to abate such building as a public nuisance.

701.3 Failure to Commence Work. Whenever the required repair or demolition is not commenced within 30 days after any final notice and order issued under this code becomes effective:

1. The building official shall cause the building described in such notice and order to be vacated by posting at each entrance thereto a notice reading:

DANGEROUS BUILDING DO NOT OCCUPY

It is a misdemeanor to occupy this building, or to remove or deface this notice.

Building Official
..... of

2. No person shall occupy any building which has been posted as specified in this section. No person shall remove or deface any such notice so posted until the repairs, demolition or removal ordered by the building official have been completed and a certificate of occupancy issued pursuant to the provisions of the Building Code.

3. The building official may, in addition to any other remedy herein provided, cause the building to be repaired to the extent necessary to correct the conditions which render the building dangerous as set forth in the notice and order; or, if the notice and or-

der required demolition, to cause the building to be sold and demolished or demolished and the materials, rubble and debris therefrom removed and the lot cleaned. Any such repair or demolition work shall be accomplished and the cost thereof paid and recovered in the manner hereinafter provided in this code. Any surplus realized from the sale of any such building, or from the demolition thereof, over and above the cost of demolition and of cleaning the lot, shall be paid over to the person or persons lawfully entitled thereto.

SECTION 702 — EXTENSION OF TIME TO PERFORM WORK

Upon receipt of an application from the person required to conform to the order and by agreement of such person to comply with the order if allowed additional time, the building official may grant an extension of time, not to exceed an additional 120 days, within which to complete said repair, rehabilitation or demolition, if the building official determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property. The building official's authority to extend time is limited to the physical repair, rehabilitation or demolition of the premises and will not in any way affect the time to appeal the notice and order.

SECTION 703 — INTERFERENCE WITH REPAIR OR DEMOLITION WORK PROHIBITED

No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of this jurisdiction or with any person who owns or holds any estate or interest in any building which has been ordered repaired, vacated or demolished under the provisions of this code; or with any person to whom such building has been lawfully sold pursuant to the provisions of this code, whenever such officer, employee, contractor or authorized representative of this jurisdiction, person having an interest or estate in such building or structure, or purchaser is engaged in the work of repairing, vacating and repairing, or demolishing any such building, pursuant to the provisions of this code, or in performing any necessary act preliminary to or incidental to such work or authorized or directed pursuant to this code.

Chapter 8

PERFORMANCE OF WORK OF REPAIR OR DEMOLITION

SECTION 801 — GENERAL

801.1 Procedure. When any work of repair or demolition is to be done pursuant to Section 701.3, Item 3, of this code, the building official shall issue an order therefor to the director of public works and the work shall be accomplished by personnel of this jurisdiction or by private contract under the direction of said director. Plans and specifications therefor may be prepared by said director, or the director may employ such architectural and engineering assistance on a contract basis as deemed reasonably necessary. If any part of the work is to be accomplished by private contract, standard public works contractual procedures shall be followed.

801.2 Costs. The cost of such work shall be paid from the repair and demolition fund, and may be made a special assessment against the property involved, or may be made a personal obligation of the property owner, whichever the legislative body of this jurisdiction shall determine is appropriate.

SECTION 802 — REPAIR AND DEMOLITION FUND

802.1 General. The legislative body of this jurisdiction shall establish a special revolving fund to be designated as the repair and demolition fund. Payments shall be made out of said fund upon the demand of the director of public works to defray the costs and expenses which may be incurred by this jurisdiction in doing or causing to be done the necessary work of repair or demolition of dangerous buildings.

802.2 Maintenance of Fund. The legislative body may at any time transfer to the repair and demolition fund, out of any money in the general fund of this jurisdiction, such sums as it may deem necessary in order to expedite the performance of the work of repair or demolition, and any sum so transferred shall be deemed a loan to the repair and demolition fund and shall be repaid out of the proceeds of the collections hereinafter provided for. All funds collected under the proceedings hereinafter provided for shall be paid to the treasurer of this jurisdiction who shall credit the same to the repair and demolition fund.

Chapter 9 RECOVERY OF COST OF REPAIR OR DEMOLITION

SECTION 901 — ACCOUNT OF EXPENSE, FILING OF REPORT

The director of public works shall keep an itemized account of the expense incurred by this jurisdiction in the repair or demolition of any building done pursuant to the provisions of Section 791.3, Item 3, of this code. Upon the completion of the work of repair or demolition, said director shall prepare and file with the clerk of this jurisdiction a report specifying the work done, the itemized and total cost of the work, a description of the real property upon which the building or structure is or was located, and the names and addresses of the persons entitled to notice pursuant to Section 401.3.

SECTION 902 — NOTICE OF HEARING

Upon receipt of said report, the clerk of this jurisdiction shall present it to the legislative body of this jurisdiction for consideration. The legislative body of this jurisdiction shall fix a time, date and place for hearing said report and any protests or objections thereon. The clerk of this jurisdiction shall cause notice of said hearing to be posted upon the property involved, published once in a newspaper of general circulation in this jurisdiction, and served by certified mail, postage prepaid, addressed to the owner of the property as the owner's name and address appears on the last equalized assessment roll of the county, if such so appears, or as known to the clerk. Such notice shall be given at least 10 days prior to the date set for the hearing and shall specify the day, hour and place when the legislative body will hear and pass upon the director's report, together with any objections or protests which may be filed as hereinafter provided by any person interested in or affected by the proposed charge.

SECTION 903 — PROTESTS AND OBJECTIONS

Any person interested in or affected by the proposed charge may file written protests or objections with the clerk of this jurisdiction at any time prior to the time set for the hearing on the report of the director. Each such protest or objection must contain a description of the property in which the signer thereof is interested and the grounds of such protest or objection. The clerk of this jurisdiction shall endorse on every such protest or objection the date of receipt. The clerk shall present such protests or objections to the legislative body of this jurisdiction at the time set for the hearing, and no other protests or objections shall be considered.

SECTION 904 — HEARING OF PROTESTS

Upon the day and hour fixed for the hearing, the legislative body of this jurisdiction shall hear and pass upon the report of the director together with any such objections or protests. The legislative body may make such revision, correction or modification in the report or the charge as it may deem just; and when the legislative body is satisfied with the correctness of the charge, the report (as submitted or as revised, corrected or modified) together with the charge, shall be confirmed or rejected. The decision of the legislative body of this jurisdiction on the report and the charge, and on all protests or objections, shall be final and conclusive.

SECTION 905 — PERSONAL OBLIGATION OR SPECIAL ASSESSMENT

905.1 General. The legislative body of this jurisdiction may thereupon order that said charge shall be made a personal obligation of the property owner or assess said charge against the property involved.

905.2 Personal Obligation. If the legislative body of this jurisdiction orders that the charge shall be a personal obligation of the property owner, it shall direct the attorney for this jurisdiction to collect the same on behalf of this jurisdiction by use of all appropriate legal remedies.

905.3 Special Assessment. If the legislative body of this jurisdiction orders that the charge shall be assessed against the property, it shall confirm the assessment, cause the same to be recorded on the assessment roll, and thereafter said assessment shall constitute a special assessment against and a lien upon the property.

SECTION 906 — CONTEST

The validity of any assessment made under the provisions of this chapter shall not be contested in any action or proceeding unless the same is commenced within 30 days after the assessment is placed upon the assessment roll as provided herein. Any appeal from a final judgment in such action or proceeding must be perfected within 30 days after the entry of such judgment.

SECTION 907 — AUTHORITY FOR INSTALLMENT PAYMENT OF ASSESSMENTS WITH INTEREST

The legislative body of this jurisdiction, in its discretion, may determine that assessments in amounts of \$500.00 or more shall be payable in not to exceed five equal annual installments. The legislative body's determination to allow payment of such assessments in installments, the number of installments, whether they shall bear interest, and the rate thereof shall be by a resolution adopted prior to the confirmation of the assessment.

SECTION 908 — LIEN OF ASSESSMENT

908.1 Priority. Immediately upon its being placed on the assessment roll, the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessments shall be liens against the lots or parcels of land assessed, respectively. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property and shall be paramount to all other liens except for state, county and property taxes with which it shall be upon a parity. The lien shall continue until the assessment and all interest due and payable thereon are paid.

908.2 Interest. All such assessments remaining unpaid after 30 days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the rate of 7 percent per annum from and after said date.

SECTION 909 — REPORT TO ASSESSOR AND TAX COLLECTOR: ADDITION OF ASSESSMENT TO TAX BILL

After confirmation of the report, certified copies of the assessment shall be given to the assessor and the tax collector for this

jurisdiction, who shall add the amount of the assessment to the next regular tax bill levied against the parcel for municipal purposes.

SECTION 910 — FILING COPY OF REPORT WITH COUNTY AUDITOR

If the county assessor and the county tax collector assess property and collect taxes for this jurisdiction, a certified copy of the assessment shall be filed with the county auditor on or before August 10th. The descriptions of the parcels reported shall be those used for the same parcels on the county assessor's map books for the current year.

SECTION 911 — COLLECTION OF ASSESSMENT: PENALTIES FOR FORECLOSURE

The amount of the assessment shall be collected at the same time and in the same manner as ordinary property taxes are collected

and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary property taxes. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to such assessment.

If the legislative body of this jurisdiction has determined that the assessment shall be paid in installments, each installment and any interest thereon shall be collected in the same manner as ordinary property taxes in successive years. If any installment is delinquent, the amount thereof is subject to the same penalties and procedure for sale as provided for ordinary property taxes.

SECTION 912 — REPAYMENT OF REPAIR AND DEMOLITION FUND

All money recovered by payment of the charge or assessment or from the sale of the property at foreclosure sale shall be paid to the treasurer of this jurisdiction, who shall credit the same to the repair and demolition fund.

EXHIBIT 14

London, Susie

Sent with Good (www.good.com)

-----Original Message-----

From: Susana Wood (<mailto:Susana.Wood@stocktonca.gov>)
Sent: Tuesday, July 11, 2017 01:03 PM Pacific Standard Time
To: Vignolo, Anthony
Subject: 1825 Pacific Avenue - Meeting Request

Anthony:

I am following up on our phone conversation of earlier. I have contacted the City's Fire and building officials and advised them that I am working with you to schedule a meeting next week to discuss, or at least begin discussing, technical issues and other matters regarding moving this case forward. My secretary Esther Gilliland, will schedule the meeting very soon for Monday or Tuesday. I will get as many technical people with knowledge of the facts of this case to that meeting as possible, so that it can be as productive as possible. As we discussed, I will also be inviting the bank's representatives to attend as they have asked to be included in any forward moving efforts in this regard. Finally, I'll need as built drawings of the building – at whatever stage they may be at – to be brought to the meeting. It will help.

I'll be sending a formal response to your July 7, 2017 letter as well, which will cover the points I raised in our earlier conversation, but I wanted to get this meeting scheduled as soon as possible.

Let me know if you have any questions.

Susana Alcalá Wood

Assistant City Attorney

Office of the City Attorney

City of Stockton

425 North El Dorado Street

2nd Floor

Stockton, CA 95207

(209) 937-8333

susana.wood@stocktonca.gov

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EXHIBIT 15



CITY OF STOCKTON
OFFICE OF THE CITY ATTORNEY
CITY HALL
425 NORTH EL DORADO STREET
STOCKTON, CA 95202-1997
TELEPHONE (209) 937-8333
FACSIMILE (209) 937-8898

August 3, 2017

Max Steinheimer
Anthony Vignolo
Downey Brand LLP
3425 Brookside Road, Suite A
Stockton, CA 95129

Via Email

Re: **Violation of Notice and Order to Vacate Empire Theatre Building
(1825 Pacific Avenue)**


My office has received multiple reports that despite the existing Notice and Order to Vacate on the Empire Theatre building owned and controlled by your client Kit Bennett, there has been continued occupancy, including continued business operations, being conducted inside the building. The principal violator is Catalyst Realty owned by Constance Carter, who based on the reports we have received, has never vacated the building and has continued to operate her business in the building, including allowing clients, employees and members of the public to access the building. Our fire department also was at the building today, found the [former] Centrale location unsecured and wide open and upon entry discovered that there were contractors working doing major construction, all without prior authorization from the building office to enter the building or a legally required building permit.

Please be advised that the City is immediately moving forward with further enforcement action to address the multiple violations of the Building Official's orders.

Additionally, following the meeting between Building Official (Lydia Clary) and Mr. Garcia (your client's architect) which took place on July 27, 2017, Mr. Garcia was to follow up and provide Ms. Clary with necessary information as to the submittal of "as-built" plans. As of 4:00 this afternoon, despite multiple efforts by Ms. Clary to contact Mr. Garcia, he has not responded.

JOHN M. LUEBBERKE
CITY ATTORNEY

BY


ANGEL A. SOLIS
Deputy City Attorney

AAS:nn

London, Susie

From: Vignolo, Anthony
Sent: Friday, August 04, 2017 4:51 PM
To: angel.solis@stocktonca.gov
Cc: London, Susie; Steinheimer, Max; Susana Wood (Susana.Wood@stocktonca.gov)
Subject: 1825 Pacific Avenue/Christopher Bennitt

Dear Mr. Solis:

I have received and reviewed your written correspondence dated August 3, 2017, alleging violations of the Notice and Order to Vacate the above-referenced property. First, you state in the letter that there has been "continued occupancy, including continued business operations" being conducted inside the building by Catalyst Realty. This is the first time we have been made aware of any alleged "continued occupancy" or "continued business operations." We will be discussing this matter with Constance Carter, the owner of Catalyst Realty, immediately. To the extent that there is any truth to such allegations, we will of course remind Ms. Carter of the terms of the order and, to the extent necessary, change the locks to that business suite to ensure that no occupancy or business operations continue.

Second, you state in the letter that on August 3, 2017, the fire department witnessed that the former Centrale location was "unsecured and wide open" and discovered "contractors working doing major construction," all without "prior authorization" or a "legally required building permit." By email correspondence dated June 13, 2017, in response to my inquiry as to the protocol that Mr. Bennitt and his consultants should follow before accessing and inspecting the property, you advised: "There is no protocol. The owner and/or agents can access the property for any repairs, inspections, maintenance, etc. the property simply can't be used to conduct business or used as a residence by anyone." As you may be aware, when Centrale vacated the property in June, it removed various trade fixtures, resulting in damage to the floors and walls. Consistent with your email of June 13, 2017, confirming my client's right to access the property for the purpose of "any repairs" and "maintenance," my client had three maintenance workers repair such damage and clean the business suite on August 3. None of the work that was done required building permits.

Finally, you state in the letter that following the July 27, 2017, meeting between Lydia Clary and Joe Garcia (my client's architect), "Mr. Garcia was to follow up and provide Ms. Clary with necessary information as to the submittal of 'as built' plans" and as of August 3, "despite multiple efforts by Ms. Clary to contact Mr. Garcia, he has not responded." Mr. Garcia was surprised by this assertion, as he had not received a single telephone call or email from Ms. Clary following their July 27th meeting, and there was no discussion whatsoever at that meeting as to when Mr. Garcia would be submitting anything to the City. Mr. Garcia has since looked into the matter, and discovered that Ms. Clary sent an email on July 31, 2017, to only Mr. Garcia's assistant, Eren Loza, and did not include Mr. Garcia on that email. Ms. Loza erroneously assumed that Mr. Garcia was included on that email, and therefore did not separately forward the email to him until after I shared a copy of your letter with him yesterday.

Please contact me if you have any further questions.

Anthony L. Vignolo

DOWNEYBRAND

Downey Brand LLP
3425 Brookside Road, Suite A
Stockton, CA 95219
209.473.6450 Main
209.472.3920 Direct
209.472.3921 Fax

London, Susie

From: Susana Wood <Susana.Wood@stocktonca.gov>
Sent: Monday, August 07, 2017 10:23 AM
To: Vignolo, Anthony
Cc: London, Susie; Steinheimer, Max; mhakeem@hemlaw.com; Angel Solis
Subject: RE: 1825 Pacific Avenue/Christopher Bennitt

Mr. Vignolo,

We will advise the Fire and Building Officials that your client is taking immediate action to insure that Catalyst Realty, including the owner, her employees, agents and customers immediately cease using or occupying or remaining in the building. As the owner of the property Mr. Bennet remains responsible for any activity on the property, including daily monitoring if necessary to prevent unauthorized access. If Mr. Bennet is unable to monitor this buildings' activity closely, I would highly recommend utilizing a local property management company or a security company. Please contact my office as soon as you have confirmed through your client that Catalyst Realty has exited and what steps will be taken to insure that they do not continue to violate the closure order.

As to your point that the construction activity our Fire Official observed at the former Centrale site may have fallen under the category of "simple access to the building for repairs and maintenance" — let me put that notion to rest: What is going on at the former Centrale location is a full gut of the interior, including removal of the kitchen. In any jurisdiction throughout the State of California, such work would require a building permit. Mr. Bennitt should be aware of that activity, and more specifically, he has been ordered to obtain building permits for any such work. For the sake of providing definitive clarity on this issue — I will schedule a conference call between you and your client and my office and the building official this week. Until then, **no construction work** should be taking place at the property without first submitting plans and obtaining a valid building permit from the City of Stockton Building Department. Until such time as we have the conference call on this issue, if Mr. Bennet or his agents have any question as to whether work they are about to undertake qualifies as "Construction Work" then they are to contact Supervising Building Inspector John Freitas at 209-639-7758 **BEFORE** doing any work.

Finally, I take it that Mr. Garcia has gotten the message and that he will now be reaching out to Building Official Clary soon. I will so advise her.

Susana Alcala Wood
Assistant City Attorney
Office of the City Attorney
City of Stockton
425 North El Dorado Street
2nd Floor
Stockton, CA 95207
(209) 937-8333
susana.wood@stocktonca.gov

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EXHIBIT 16



CITY OF STOCKTON

22 E. Weber Avenue, Suite 350 • Stockton, CA 95202 • 209 / 937-8813 • Fax 209 / 937-7264
www.stocktongov.com

LEGAL NOTICE AND ORDER TO REPAIR OR ABATE

[Issued pursuant to Health and Safety Code section 17980 et sequentes.]

DELIVERED VIA POSTING ON NUISANCE PROPERTY AND FIRST-CLASS MAIL TO INTERESTED PARTIES

Dated: September 5, 2017

Nuisance Properties:

1825 Pacific Avenue
Stockton, California 95204
APN 137-020-42

1827 Pacific Avenue
Stockton, California 95204
APN 137-020-42

1829 Pacific Avenue
Stockton, California 95204
APN 137-020-42

1831 Pacific Avenue
Stockton, California 95204
APN 137-020-42

Compliance Completion Deadline: September 20, 2017 (15 days)

Interested Parties: See Attached Service List

To All Interested Parties:

This Legal Notice and Order to Repair or Abate ("N&O") is issued pursuant to Health and Safety Code sections 17980 et sequentes. It has been determined by building and code enforcement officials for the City of Stockton ("City") that the parcel of real property located at the address and Assessor's Parcel Number ("APN") identified above ("Nuisance Property") contains unlawful conditions that constitute public nuisances and pose a substantial danger to the



CITY OF STOCKTON

22 E. Weber Avenue, Suite 350 • Stockton, CA 95202 • 209 / 937-8813 • Fax 209 / 937-7264
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LEGAL NOTICE AND ORDER TO REPAIR OR ABATE

health, safety, and general welfare of the occupants, the surrounding community, and the public. These unlawful conditions are in violation of multiple provisions of law, including, but not limited to, the California Health and Safety Code ("H&S"), the California Building Standards Code ("CBSC"), the California Building Code ("CBC"), the California Fire Code ("CFC"), the Uniform Housing Code ("UHC"), the Uniform Code for the Abatement of Dangerous Buildings ("UCADB"), and the Stockton Municipal Code ("SMC").

The following unlawful conditions were identified during inspections of the Nuisance Property (this may not be an exhaustive list of all violations and the City retains the right to identify further violations as they are discovered):

1825 Pacific Avenue – Empire/Royal Theatre

1. **Illegal Construction. Unpermitted Alterations.** The Nuisance Property contains unpermitted alterations and additions to the tenant-occupied spaces. Remove all alterations and additions or obtain all required permits. (UCADB, § 302(13); SMC, §§ 15.04.250, 15.04.260, 15.28.010.)
2. **Illegal Construction. Addition of Rooms Under Stage.** A "green room" was constructed underneath the stage without a permit. Stairs leading to "green room" are damaged and dilapidated. Electrical work was also installed without permits. Unpermitted construction often contains serious latent defects that can undermine structural integrity and create a severe life and safety risk due to risk of either partial or total collapse. Obtain permits to repair and replace stairs and elements in the "green room" according to building code standards. (H&S, § 17920.3(i); CBC, §§ 105.1, 110.1; UCADB, § 302(9), (13); SMC, §§ 15.04.190(A), 15.04.250, 15.08.010, 15.24.030(b)(9), 15.28.010.)
3. **Illegal Construction. Separator Walls.** Separation walls between the main theatre, dressing rooms, storage areas, and north storage area have been constructed without permits, inspections, or approvals. Unpermitted construction often contains serious latent defects that can undermine structural integrity and create a severe life and safety risk due to risk of either partial or total collapse. Obtain permits to remove and replace separation walls to meet minimum building code standards. (H&S, § 17920.3(i); CBC, §§ 105.1, 110.1; UCADB, § 302(9), (13); SMC, §§ 15.04.190(A), 15.04.250, 15.04.310, 15.08.010, 15.24.030(b)(9), 15.28.010.)



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4. **Means of Egress. Blocked Pathways.** Exit pathways within the main theatre are blocked, damaged, and deteriorated. Handrails must be in good working order and cleared of obstructions. All exits and egress routes must be cleared and remain unobstructed to allow for proper access in emergencies. Repair and replace the damaged pathways and steps. (H&S, § 17920.3(l); CBC, §§ 110.1, 1003.6, 1014.4; UCADB, § 302(2), (13); SMC, §§ 15.08.010, 15.24.030(b)(12), 15.28.010.)
5. **Means of Egress. Exit Doors.** The west and east side exit doors do not open properly. This blocks the means of egress in case of fire or other emergency, creating a fire hazard. All exit doors must be repaired or replaced. (H&S, § 17920.3(l); CBC, §§ 116.1, 1010.1; UCADB, § 302(2), (13); SMC, §§ 15.08.010, 15.24.030(b)(12), 15.28.010.)
6. **Means of Egress. Emergency Lights.** West side and east side emergency lights within the main theatre are not functioning. This will prevent occupants from locating exit doors in emergency and creates a substantial fire hazard. Repair and replace emergency lights. (H&S, § 17920.3(a)(10), (l); CBC, § 110.1; CFC, §§ 604.6, 1013.3; UCADB, § 302(2), (13); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(1)(x), 15.28.010.)
7. **Dilapidated and Deteriorated Ceiling Elements.** The ceiling throughout the theatre is damaged and deteriorated due to water intrusion and contains evidence of unpermitted repairs. Discover source of water intrusion and repair and replace damaged ceiling elements according to building code standards, which may require permits. (H&S, § 17920.3(i); CBC, § 110.1; CFC, § 703.1; UCADB, § 302(8), (9), (13); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(9), 15.28.010.)
8. **Dangerous Electrical Wiring. Hazardous Use of Extension Cords.** There are multiple extension cords being used as permanent sources of electrical wiring throughout the theatre. This creates a substantial fire hazard due to exposure and lack of permanent wiring. Such use creates a fire and electrical hazard because extension cords are vulnerable to environmental and physical damage when so used. Install permanent wiring. (H&S, § 17920.3(d); CBC, §§ 105.1, 110.1; CEC, §§ 300.4, 382.12; CFC, §§ 605.1, 605.5; UCADB, § 302(16); SMC, §§ 15.04.250, 15.08.010, 15.12.010, 15.24.030(b)(4), 15.28.010, 15.36.010.)



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9. **Flammable Decorative Materials. Fire Hazard.** The curtain on the north stage is not flame retardant. The curtain needs to be removed or be flame-retardant treated, and must be field tested by the Stockton Fire Department. (H&S, § 17920.3(h); CBC, § 110.1; CFC, § 807.3; UCADB, § 302(9), (13), (16); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(8), 15.28.010.)
10. **Inadequate Fire-Resistant Structure.** The ceiling scuttle door is missing inside the closet next to the east exit door. Repair or replace the missing door. Insufficient fire-resistant construction increases the likelihood of fire and places occupants and neighbors in peril. (H&S, § 17920.3(m); CBC, § 110.1; CFC, § 703.1; UCADB, § 302(13), (16); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(13), 15.28.010.)
11. **Lack of Identification of Electrical Panels.** The electrical panels lack identification and labels. The electrical panels/disconnects require labeling and identification according to building codes. (CBC, § 110.1; CEC 408.4; UCADB, § 302(13); SMC, §§ 15.08.010, 15.12.010, 15.28.010.)
12. **Dangerous Electrical Wiring. Missing Electrical Receptacle Covers.** There are missing exterior electrical receptacle cover plates throughout the theatre. Replace all missing or damaged electrical receptacle covers to meet building code standards. Missing or exposed electrical receptacles increases the risk of fire and electrical shock to occupants using the switches and outlets. (H&S, § 17920.3(d); CBC, § 110.1; CFC, §§ 605.1, 605.6; UCADB, § 302(13), (16); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(4), 15.28.010.)
13. **Failure to Comply with Administrative Citations.** Since 2012, Numerous administrative citations have been issued for violations of State building codes and the Stockton Municipal Code. (UCADB, § 404(2); SMC, §§ 1.32.010, 15.28.010.)

1825 Pacific Avenue – Espresso Coffee House

14. **Illegal Construction.** The Nuisance Property contains unpermitted alterations and additions to the tenant-occupied spaces. Remove all alterations and additions or obtain all required permits. (UCADB, § 302(13); SMC, §§ 15.04.250, 15.04.260, 15.28.010.)
15. **Means of Egress. Blocked Pathways.** The entrance and exit from the coffee shop are blocked. Egress routes are blocked or severely compromised by chairs and table



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in the seating area installed without a permit. This will prevent occupants from utilizing exits in case of emergency. All exits and egress routes must be cleared and remain unobstructed to allow for proper access in emergencies. (H&S, § 17920.3(l); CBC, § 110.1; CFC, § 1029.3; UCADB, § 302(1), (9), (13); SMC, §§ 15.04.250, 15.08.010, 15.12.010, 15.24.030(b)(12), 15.28.010.)

16. **Means of Egress. Emergency Lights.** There are inoperable or disconnected "Exit" signs within the coffeehouse portion of the building. The test switch is missing on the emergency lighting to the north of the entrance/exit. Malfunctioning emergency lights prevent occupants from locating exit doors in an emergency and creates a substantial fire hazard. Repair or replace emergency lights. (H&S, § 17920.3(a)(10), (l); CBC, § 110.1; CFC, §§ 604.5, 604.5.1; UCADB, § 302(2), (13); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(1)(x), 15.28.010.)
17. **Unsecured Compress Gas Storage. Fire Hazard.** There are unsecured compressed gas cylinders being stored within the coffeehouse as well as in the seating/patio area. Storage in hazardous conditions creates a substantial fire hazard. Properly secure the gas cylinders in an approved manner. (H&S, § 17920.3(h); CBC, § 110.1; CFC, § 5303.5.3; SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(8).)
18. **Dangerous Electrical Wiring. Hazardous Use of Extension Cords.** There are multiple extension cords being used as permanent sources of electrical wiring and interior lighting installation throughout the business and seating area, including the electric room, storage rooms, box office, and the office area. Additionally, extension cords have been installed through holes cut in the walls, ceilings, doorways, and other locations. Extension cords have been placed under mats which employees stand and walk on and have been used to connect to the box office ticket windows. Extension cords are also deteriorated and damaged, creating a substantial fire hazard due to exposure and lack of permanent wiring. Such use creates a fire and electrical hazard because extension cords are vulnerable to environmental and physical damage when so used. A permanent wiring method must be installed to replace the numerous extension cords and power strips being used in place of a permanent wiring method. (H&S, § 17920.3(d); CBC, §§ 105.1, 110.1; CEC, §§ 300.4, 382.12; CFC, §§ 605.1, 605.3, 605.5, 605.6; UCADB, § 302(9), (13), (16); SMC, §§ 15.04.250, 15.08.010, 15.12.010, 15.24.030(b)(4), 15.28.010, 15.36.010.)



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19. **Dangerous Electrical Wiring. Exposed Electrical Wiring.** Exposed wiring poses a significant risk of electrical shock or fire. Abate all exposed wiring in the storage area off the seating area, the electric room off the seating area, and the box office area. Replace all damaged and exposed extension cords in the storage area. Exposed wiring increases the risk of a fire starting and places the lives and property of any occupants and neighboring properties in danger. Properly cap all exposed wiring. (H&S, § 17920.3(d); CBC, § 110.1; CFC, §§ 605.1, 605.6; UCADB, § 302(13), (16); SMC, §§ 15.12.010, 15.24.030(b)(4), 15.28.030.)
20. **Deteriorated and Dilapidated Ceilings.** Ceiling elements throughout the kitchen area are damaged, deteriorated, and missing. Dilapidated and missing ceiling elements create a collapse hazard to occupants, and allows for water and insect intrusion that will create further extreme health and safety dangers. Repair or replace damaged ceiling elements. (H&S, § 17920.3(b)(6), (g)(2); CBC, § 110.1; CFC, § 703.1; UCADB, § 302(8), (9), (13); SMC, §§ 15.08.010, 15.12.010, 15.28.010.)
21. **Exposed Electrical Outlets and Receptacle Covers.** There are open electrical boxes, electrical panels, including dead front, light fixtures, receptacle outlets, and other electrical covers throughout the coffeehouse, seating area, and the patio area. Replace all missing or damaged electrical receptacle covers to meet building code standards. Missing or exposed electrical receptacles increases the risk of fire and electrical shock to occupants using the switches and outlets. (H&S, § 17920.3(d); CBC, § 110.1; CFC, § 605.6; UCADB, § 302(13), (16); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(4), 15.28.030.)
22. **Unpermitted Electrical Installations.** The electrical sub-panels were installed without permits. Unpermitted electrical installation often contains serious latent defects that can create a severe life and safety risk due to risk of fire and shock. Repair or replace the electrical sub-panels with according to permits and building code standards. (H&S, § 17920.3(d); CBC, §§ 105.1, 110.1; CFC, § 605.1; UCADB, § 302(13); SMC, §§ 15.04.190(A), 15.04.250, 15.08.010, 15.12.010, 15.24.030(b)(4), 15.28.010.)
23. **Insufficient Clearance Around Electrical Sub-Panels.** There must be appropriate clearance around electrical sub-panels throughout the coffeehouse, which are blocked by storage and other items. The proper working clearance of three feet in front of all electrical panels, disconnects, fuse panels, etc. must be provided. Lack of clearance



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creates a higher risk of fire. (CBC, § 110.1; CEC, § 110.26; CFC, § 605.1; UCADB, § 302(9), (13); SMC, §§ 15.08.010, 15.12.010, 15.28.010, 15.36.010.)

24. **Fire Extinguishers Require Service. Fire Hazard.** Fire extinguishers in the coffeehouse, including the seating and patio area, have not been properly serviced. Inoperable fire extinguishers are a fire hazard and pose a danger to the structure and occupants. Ensure that all fire-protection systems have been properly serviced. (HSC, § 17920.3(h); CBC, § 110.1; CFC, § 906.2; UCADB, § 302(9), (13), (16); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(8), 15.28.010.)

1825 Pacific Avenue, Suite 1 – Balance Physical Therapy

25. **Means of Egress. Disconnected Handrails.** The railing on the interior stairway is not connected to the stair and poses a safety hazard. All exits and egress routes must be cleared and remain unobstructed to allow for proper access in emergencies. Properly secure and install code compliant stair railings on the interior stairway. (H&S, § 17920.3(i), (l); CBC, §§ 110.1, 1014.4; CFC, § 703.1; UCADB, § 302(2), (13); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(9), 15.24.030(b)(12), 15.28.010.)

1825 Pacific Avenue, Suite 2 – Centrale Kitchen and Bar

26. **Unsecured Compress Gas Storage. Fire Hazard.** There are unsecured compressed gas cylinders being stored within the business. Storage in hazardous conditions creates a substantial fire hazard. Properly secure all gas cylinders in an approved manner. (H&S, § 17920.3(h); CBC, § 110.1; CFC, § 5303.5.3; SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(8).)
27. **Means of Egress. Emergency Lights.** The "Exit" sign at the rear of the kitchen is not illuminated. This will prevent occupants from locating exit doors in emergency and creates a substantial fire hazard. All exits and egress routes must be illuminated to allow for exits in emergencies. Repair or replace the "Exit" sign. (H&S, § 17920.3(a)(10), (l); CBC, § 110.1; CFC, §§ 604.6, 1013.3; UCADB, § 302(2), (13); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(1)(x), 15.24.030(b)(12), 15.28.010.)



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28. **Dangerous Electrical Wiring. Hazardous Use of Extension Cords.** There are multiple extension cords being used as permanent sources of electrical wiring throughout the business. Such use creates a fire and electrical hazard because extension cords are vulnerable to environmental and physical damage when so used. A permanent wiring method must be installed to replace the numerous extension cords and power strips being used in place of a permanent wiring method. (H&S, § 17920.3(d); CBC, § 105.1, 110.1; CEC, §§ 300.4, 382.12; CFC, § 605.3, 605.5; UCADB, § 302(9), (13), (16); SMC, §§ 15.04.250, 15.08.010, 15.12.010, 15.24.030(b)(4), 15.28.010, 15.36.010.)
29. **Dangerous Electrical Wiring. Exposed Electrical Wiring.** There is illegal exposed wiring in the exterior patio area of the business. Exposed wiring increases the risk of fire starting and places the lives and property of neighboring properties in danger. Repair or replace all exposed electrical wiring. (H&S, § 17920.3(d); CBC, § 110.1; CFC, § 605.6; UCADB, § 302(13), (16); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(4), 15.28.030.)
30. **Dangerous Electrical Wiring. Missing Electrical Receptacle Covers.** There are missing exterior electrical receptacle covers in the patio area. Replace all missing or damaged electrical receptacle covers to meet building code standards. Missing or exposed electrical receptacles increases the risk of fire and electrical shock to occupants using the switches and outlets. Replace all missing exterior receptacle covers. (H&S, § 17920.3(d); CBC, § 110.1; CFC, § 605.6; UCADB, § 302(13), (16); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(4), 15.28.030.)
31. **Accumulation of Grease. Fire Hazard.** There is a significant accumulation of grease and debris from kitchen hoods and cooking appliances in the restaurant. This creates a substantial fire hazard. Clean and remove grease and debris from kitchen hoods and cooking appliances and maintain in a neat and sanitary manner. (HSC, § 17920.3(h); CBC, § 110.1; CFC, § 904.12.6; UCADB, § 302(9), (13), (16); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(8), 15.28.010.)

1825 Pacific Avenue, Suites 3 and 4 – Catalyst Realty

32. **Illegal Construction. Unpermitted Additions.** Construction and additions on the second floor are not permitted, including electrical and ventilation rooms.



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Unpermitted construction often contains serious latent defects that can undermine structural integrity and create a severe life and safety risk due to risk of either partial or total collapse. Obtain permits to replace and repair elements according to building code standards. (H&S, § 17920.3(i); CBC, §§ 105.1, 110.1; UCADB, § 302(9), (13); SMC, §§ 15.04.190(A), 15.04.250, 15.04.310, 15.08.010, 15.24.030(b)(9), 15.28.010.)

33. **Dangerous Electrical Wiring. Hazardous Use of Extension Cords.** There are multiple extension cords being used as permanent sources of electrical wiring throughout the first and second floor of the offices. Such use creates a fire and electrical hazard because extension cords are vulnerable to environmental and physical damage when so used. A permanent wiring method must be installed that will replace the numerous extension cords being used in place of a permanent wiring method. (H&S, § 17920.3(d); CBC, § 110.1; CEC, §§ 300.4, 382.12; CFC, § 605.5; UCADB, § 302(9), (13), (16); SMC, §§ 15.04.250, 15.08.010, 15.12.010, 15.24.030(b)(4), 15.28.010, 15.36.010.)
34. **Means of Egress. Blocked Pathways.** The second story emergency exit is not accessible due to malfunctioning doors and lighting. This will prevent occupants from utilizing exits in case of emergency. Exit doors must swing in the direction of travel and there must be two exits per occupancy load. All exits and egress routes must be cleared and remain unobstructed to allow for proper access in emergencies. (H&S, § 17920.3(l); CBC, §§ 110.1, 1015.1; CFC, §§ 1010.1.2, 1019.1; UCADB, § 302(1), (9), (13); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(12), 15.28.010.)
35. **Means of Egress. Emergency Lights.** The "Exit" signs are not illuminated. This will prevent occupants from locating exit doors in emergency and creates a substantial fire hazard. Repair or replace emergency lights. (H&S, § 17920.3(a)(10), (l); CBC, § 110.1; CFC, § 1013.3; UCADB, § 302(9), (13); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(1)(x), (b)(12), 15.28.010.)
36. **Damaged and Deteriorated Ceilings.** Ceiling tiles in the second-floor electrical room are damaged, deteriorated, or missing. The ceiling in the storage room is also damaged. Repair or replace the missing ceiling elements. (H&S, § 17920.3(i); CBC, § 110.1; CFC, § 703.1; UCADB, § 302(13); SMC, §§ 15.12.010, 15.24.030(b)(9), 15.28.010.)



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37. **Dilapidated and Deteriorated Walls.** The wall in the storage room is damaged. All walls need to be repaired or replaced sufficient to building code standards, including, but not limited to, installation of drywall, wooden frames, and repainting. (H&S, § 17920.3(i); CBC, § 110.1; CFC, § 703.1; UCADB, § 302(13), SMC, §§ 15.12.010, 15.24.030(b)(9), 15.28.010.)

1825 Pacific Avenue, Suite 5 – Gustv Wings

38. **Dangerous Electrical Wiring. Hazardous Use of Extension Cords.** There are multiple extension cords being used as permanent sources of electrical wiring throughout the business. Such use creates a fire and electrical hazard because extension cords are vulnerable to environmental and physical damage when so used. A permanent wiring method must be installed that will replace the numerous extension cords being used in place of a permanent wiring method. (H&S, § 17920.3(d); CBC, §§ 105.1, 110.1; CEC, §§ 300.4, 382.12; CFC, § 605.5; UCADB, § 302(9), (13), (16); SMC, §§ 15.04.250, 15.08.010, 15.12.010, 15.24.030(b)(4), 15.28.010, 15.36.010.)
39. **Alternative Fire Extinguishing System. Fire Hazard.** The fat fryer on the west side of the cookers is not positioned under the hood and duct system nozzle. The lack of a functioning alternative fire extinguishing system is a fire hazard and poses a danger to the structure and occupants. (HSC, § 17920.3(h); CBC, §§ 116.1; CFC, §§ 904.1; UCADB, § 302(9), (13), (16); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(8), 15.28.010.)
40. **Missing Splash Guards. Fire Hazard.** The fryers in the kitchen are missing splash guards. Reposition fryer on the west side of the cookers under the extinguishing system. The lack of splash guards poses a substantial fire risk and injury risk to employees and occupants. (H&S, § 17920.3(c); CBC, § 110.1; CFC, §§ 904.1, 904.12.6; UCADB, § 302(13); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(3), 15.28.010.)
41. **Accumulation of Grease. Fire Hazard.** There is a significant buildup of grease in the kitchen cooking vents, kitchen exhaust hood, and walls. This creates a substantial fire hazard in the kitchen. Clean and remove grease and debris from kitchen vents, kitchen exhaust hoods, and walls and maintain in a neat and sanitary manner. (HSC,



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§ 17920.3(h); CBC, § 110.1; CFC, § 904.12.6.3; UCADB, § 302(9), (13), (16); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(8), 15.28.010.)

42. **Accumulation of Trash and Debris Around Water Heater. Fire Hazard.** There is a significant amount of garbage, debris, and other combustible items being stored near the water heater. The accumulation of combustible materials near the water heater poses a significant fire hazard. Remove all trash and debris. (H&S, § 17920.3(h); CBC, § 110.1; CFC, §§ 304.1, 315.3.3; UCADB, § 302(9), (13), (16); SMC, §§ 15.08.010, 15.12.010, 15.24.010, 15.24.030(b)(8), 15.28.010.)

1825 Pacific Avenue, Suite 6 – The Mile Pub

43. **Dangerous Electrical Wiring. Hazardous Use of Extension Cords.** There are multiple extension cords being used as permanent sources of electrical wiring throughout the business. An extension cord is running through a second story window to power the exterior lighting. Such use creates a fire and electrical hazard because extension cords are vulnerable to environmental and physical damage when so used. A permanent wiring method must be installed that will replace the numerous extension cords being used in place of a permanent wiring method. (H&S, § 17920.3(d); CBC, §§ 105.1, 116.1; CEC, §§ 300.4, 382.12; CFC, § 605.5; UCADB, § 302(9), (13), (16); SMC, §§ 15.04.250, 15.08.010, 15.12.010, 15.24.010, 15.24.030(b)(4), 15.28.010, 15.36.010.)
44. **Dangerous Electrical Wiring. Exposed Electrical Wiring.** There is illegal exposed wiring throughout the bar area, second floor stairway, and second floor security room. Exposed wiring increases the risk of fire starting and places the lives and property of neighboring properties in danger. All exposed wiring must be properly capped. (H&S, § 17920.3(d); CBC, § 110.1; CFC, §§ 605.6; UCADB, § 302(13), (16); SMC, §§ 15.12.010, 15.24.030(b)(4), 15.28.030.)
45. **Means of Egress. Dangerous Roll Up Door.** The main front roll-up door does not operate properly and does not open safely and securely. The roll-up door was installed without appropriate permits. The door is secured open by use of a screwdriver to wedge open the door. The roll-up door must be able to stand on its own. Repair or replace the roll-up door. (H&S, § 17920.3(m); CBC, §§ 105.1, 110.1; CFC, § 1010.1;



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UCADB, § 302(13); SMC, §§ 15.04.190(A), 15.04.250, 15.08.010, 15.12.010, 15.24.030(b)(13), 15.28.010.)

46. **Insufficient Fire-Resistance Construction. Fire Hazard.** The required fire-resistance rating of the construction materials throughout this unit have not been maintained. Construction was conducted without permits. The interior space behind the wall at the upper level of the stairway is open and the wall is breached on the west side of the bar. This opening must be properly sealed with approved fire-rated construction. Insufficient fire-resistant construction increases the likelihood of fire spreading rapidly throughout the entire building and places occupants and neighbors in peril. (HSC, §§ 17920.3(c), (m); CBC, §§ 105.1, 116.1; CFC, § 703.1; UCADB, § 302(9), (13), (16); SMC, §§ 15.04.250, 15.08.010, 15.12.010, 15.24.030(b)(3), 15.24.030(b)(4), (b)(13), 15.28.010.)
47. **Insufficient Clearance Around Electrical Sub-Panels.** There must be appropriate clearance around electrical sub-panels throughout the business, including the kitchen and bar area. The proper working clearance of three feet in front of all electrical panels, disconnects, fuse panels, etc. must be provided. Lack of clearance creates a higher risk of fire. Remove all materials 3 feet from front of the equipment to a width of the panel and grade level to 6 feet, 6 inches. (CBC, § 110.1; CEC, § 110.26; UCADB, § 302(9), (13); SMC, §§ 15.08.010, 15.28.010, 15.36.010.)
48. **Lack of Fire Extinguishers.** Fire extinguishers must be within 75 feet of the area to be protected. The fire extinguishers are missing and are outside of the protected area which poses a significant fire hazard to the structure and occupants. (H&S, § 17920.3(m); CBC, § 110.1; CFC, § 906.3.1; UCADB, § 302(13); SMC, § 15.08.010, 15.12.010, 15.24.030(b)(13), 15.28.010.)

1827 Pacific Avenue – Illegal Residential Living Unit

49. **Illegal Construction. Unpermitted Use.** The former office space was illegally converted into a rented dwelling unit. Unpermitted construction often contains serious latent defects that can undermine structural integrity and create a severe life and safety risk due to risk of either partial or total collapse. Obtain all required permits. (H&S, § 17920.3(i); CBC, §§ 105.1, 116.1; UCADB, § 302(9), (13); SMC, §§ 15.04.190(A), 15.04.250, 15.04.310, 15.08.010, 15.24.010, 15.24.030(b)(9), 15.28.010.)



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50. **Illegal Construction. Inadequate Dwelling Unit.** The room next to the kitchen/bathroom area which is being used as a bedroom does not meet the minimum requirements for bedrooms. Habitable areas have an area of not less than 70 square feet. Repair and replace dwelling unit according to the applicable building standards and acquire the required permits. (H&S, § 17920.3(a)(9); CBC, § 110.1; UHC, § 503.2; UCADB, § 302(9), (13); SMC, §§ 15.08.010, 15.24.010, 15.24.030(b)(ix), 15.28.010.)
51. **Illegal Construction. Bathroom Ventilation System.** The bathroom ventilation system and light was illegally installed in the shower and does not meet minimum safety requirements for wet locations. Repair or replace ventilation system according to building code standards. (H&S, § 17920.3(f), CBC, §§ 105.1, 116.1; CMC, 402.5; UCADB, § 302(13); SMC, § 15.08.010, 15.20.010, 15.24.010, 15.24.030(b)(6), 15.28.010.)
52. **Illegal Construction. Kitchen Installation.** The kitchen was illegally installed without appropriate permits and inspection. The stove was installed without a ventilation system. Repair or replace kitchen installations according to building code standards. (H&S, § 17920.3(a)(7); CBC, §§ 105.1, 116.1; UHC, § 701.3; UCADB, § 302(13); SMC, §§ 15.04.250, 15.08.010, 15.24.010, 15.24.030(b)(1)(vii), 15.28.010.)
53. **Means of Egress. Blocked Exit Pathways.** There is an accumulation of storage materials at the top of the staircase obstructing the exit pathway. All exits and egress routes must be cleared and remain unobstructed to allow for proper access in emergencies. Storage area must be cleared of all obstructions according to building code standards to create a safe exit pathway. (H&S, § 17920.3(i), (l); CBC, §§ 116.1, 1014.4; UHC, § 1001.12; UCADB, § 302(2), (13); SMC, §§ 15.08.010, 15.24.010, 15.24.030(b)(9), (b)(12), 15.28.010.)
54. **Means of Egress. Missing Handrails.** There are missing handrails on the loft stairway. Handrails must be repaired or replaced according to building code standards to make a safe exit pathway. (H&S, § 17920.3(i), (l); CBC, §§ 116.1, 1014.4; UHC, § 1001.12; UCADB, §§ 302(2), (13); SMC, §§ 15.08.010, 15.24.010, 15.24.030(b)(9), (b)(12), 15.28.010.)
55. **Means of Egress. Dual-Keyed Lock.** The exterior doors of the illegal dwelling unit have a dual-keyed lock. This impedes any occupants from exiting the unit during an



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emergency without the use of a key. The lock must be replaced or repaired to allow for proper access in emergencies. (H&S, § 17920.3(l); CBC, §§ 116.1, 1010.1; UHC, § 1001.12; UCADB, § 302(1), (9), (13); SMC, §§ 15.08.010, 15.24.010, 15.24.030(b)(12), 15.28.010.)

56. **Means of Egress. Barred Windows.** The windows have permanent bars blocking emergency exiting and do not meet the minimum sizing to allow for emergency escape and rescue. All exits and egress routes must be cleared and remain unobstructed to allow for proper access in emergencies. Remove bars on the windows and ensure all windows open, close, and properly operate according to building code standards. (H&S, § 17920.3(l); CBC, §§ 116.1, 1010.1; UHC, § 1001.12; UCADB, § 302(1), (9), (13); SMC, §§ 15.08.010, 15.24.010, 15.24.030(b)(12), 15.28.010.)
57. **Means of Egress. Lack of Electrical Lighting.** The required interior hall lighting at the stair is not functioning. Electricity is a necessary component of all habitable buildings. Repair or replace the interior hall lighting. (H&S, § 17920.3(a)(10), (d), (l); CBC, § 110.1; UHC, § 701.2; UCADB, § 302(9), (13); SMC, §§ 15.08.010, 15.24.010, 15.24.030(b)(1)(x), (b)(4), (b)(12), 15.28.010.)
58. **Means of Egress. Accumulation of Trash, Debris, and Rubbish. Fire Hazard.** There is an accumulation of debris and combustible materials in the storage area at the top of stairs. This creates a substantial fire risk due to the presence of combustible materials. All materials should be removed. (H&S, § 17920.3(j); CBC, § 110.1; CFC, 304.1; UCADB, § 302(13); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(10), 15.28.010.)
59. **Dangerous Electrical Wiring. Missing Electrical Receptacle Covers.** There are missing or damaged electrical receptacle covers and light switch plate covers throughout the dwelling unit. Replace all missing or damaged electrical receptacle covers and light switch plate covers to meet building code standards. Missing or exposed electrical receptacles and outlets increases the risk of fire and electrical shock to occupants using the switches and outlets. (H&S, § 17920.3(d); CBC, § 110.1; UHC, §§ 701.2, 1001.5; UCADB, § 302(13), (16); SMC, §§ 15.08.010, 15.24.010, 15.24.030(b)(4), 15.28.030.)
60. **Dilapidated and Deteriorated Ceiling.** The ceiling materials throughout the dwelling unit are damaged and deteriorated. Dilapidated and missing ceiling elements



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create a collapse hazard to occupants, and allows for water and insect intrusion that will create further extreme health and safety dangers. Repair or replace the damaged or missing ceiling materials throughout the living space. (H&S, § 17920.3(c); CBC, § 110.1; CFC, § 703.1; UCADB, § 302(5), (8), (9), (13), SMC, §§ 15.08.010, 15.12.010, 15.24.010, 15.24.030(b)(3), 15.28.010.)

61. **Dilapidated and Deteriorated Walls.** The wall materials throughout the dwelling unit are damaged and deteriorated. All walls need to be repaired or replaced sufficient to building code standards, including, but not limited to repairing stucco and repainting. (H&S, § 17920.3(i); CBC, § 110.1; CFC, § 703.1; UHC, §§ 901, 1001.13; UCADB, § 302(8), (9), (13), SMC, §§ 15.08.010, 15.12.010, 15.24.010, 15.24.030(b)(9), 15.28.010.)
62. **Lack of Adequate Smoke Alarms. Fire Hazard.** The dwelling unit as constructed lacks the requisite smoke alarm systems. The lack of a smoke alarm system combined with the presence of combustible materials creates a substantial fire hazard. (HSC, § 17920.3(o); CBC, § 110.1; CFC, § 1103.8; UCADB, § 302(9), (13); SMC, §§ 15.08.010, 15.12.010, 15.24.010, 15.24.030(b)(16), 15.28.010.)
63. **Lack of Adequate Carbon Monoxide Alarms. Fire Hazard.** The dwelling unit lacks the required carbon monoxide alarms. The lack of a carbon monoxide alarm system combined with the presence of combustible materials creates a substantial fire hazard. (HSC, § 17920.3(o); CBC, § 110.1; CFC, § 915.1; UHC, §§ 901, 1001.13; UCADB, § 302(9), (13); 1001.13; SMC, §§ 15.08.010, 15.12.010, 15.24.010, 15.24.030(b)(16), 15.28.010.)

1829 Pacific Avenue – Serendipity Salon

64. **Means of Egress. Inadequate Staircase.** The stairs to the second floor of the business do not meet the minimum building code requirements for size, width, handrails, and other requirements creating a hazardous condition. The second-floor stairway was installed without permits. Repair and replace stairway according to permits and building code standards. (H&S, § 17920.3(l); CBC, §§ 105.1, 116.1; UCADB, § 302(1), (13); SMC, §§ 15.04.250, 15.08.010, 15.24.030(b)(12), 15.28.010.)



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65. **Means of Egress. Emergency Lights.** There are missing illuminated "Exit" signs and exit lighting. This will prevent occupants from locating exit doors in emergency and creates a substantial fire hazard. Repair and replace emergency lights. (H&S, § 17920.3(a)(10), (1); CBC, § 110.1; CFC, §§ 604.6, 1013.3; UCADB, § 302(2), (13); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(1)(x), (b)(12), 15.28.010.)
66. **Dangerous Electrical Wiring. Hazardous Use of Extension Cords.** Multiple extension cords are being used as permanent sources of electrical wiring throughout the business. This creates a substantial fire hazard due to exposure and lack of permanent wiring. Such use creates a fire and electrical hazard because extension cords are vulnerable to environmental and physical damage when so used. A permanent wiring method must be installed that will replace the numerous extension cords and power strips being used in place of a permanent wiring method. (H&S, § 17920.3(d); CBC, §§ 105.1, 116.1; CEC, §§ 300.4, 382.12; CFC, § 605.5; UCADB, § 302(16); SMC, §§ 15.04.250, 15.08.010, 15.12.010, 15.24.030(b)(4), 15.28.010, 15.36.010.)
67. **Insufficient Clearance Space Around Electrical Sub-Panels.** There must be appropriate clearance around electrical sub-panels throughout the business. The proper working clearance of 3 feet in front of all electrical panels, disconnects, fuse panels, etc. must be provided. Lack of clearance creates a higher risk of fire. Remove all materials 3 feet from front of the equipment to a width of the panel and grade level to 6 feet, 6 inches. (CBC, § 110.1; CEC, § 110.26; UCADB, § 302(9), (13); SMC, §§ 15.08.010, 15.28.010, 15.36.010.)
68. **Dangerous Electrical Wiring. Missing Electrical Covers.** There are missing or damaged electrical outlet covers throughout the business. Replace all missing or damaged electrical outlet covers to meet building code standards. Missing or exposed electrical outlet covers increase the risk of fire and electrical shock to occupants using the switches and outlets. (H&S, § 17920.3(d); CBC, § 110.1; CFC, § 605.6; UCADB, § 302(13), (16); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(4), 15.28.030.)
69. **Fire Extinguishers Require Service. Fire Hazard.** The fire extinguishers located in the business do not have proof of annual service or recharge. Inoperable fire extinguishers are a fire hazard and pose a danger to the structure and occupants. (HSC, § 17920.3(h); CBC, § 110.1; CFC, § 906.2; UCADB, § 302(9), (13), (16); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(8), 15.28.010.)



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1831 Pacific Avenue – Casa Flores Restaurant

70. **Dangerous Electrical Wiring. Hazardous Use of Extension Cords.** There are multiple extension cords being used as permanent sources of electrical wiring throughout the business. This creates a substantial fire hazard due to exposure and lack of permanent wiring. Such use creates a fire and electrical hazard because extension cords are vulnerable to environmental and physical damage when so used. A permanent wiring method must be installed that will replace the numerous extension cords and power strips being used in place of a permanent wiring method. (H&S, § 17920.3(d); CBC, §§ 105.1, 110.1; CEC, §§ 300.4, 382.12; CFC, § 605.5; UCADB, § 302(16); SMC, §§ 15.04.250, 15.08.010, 15.12.010, 15.24.030(b)(4), 15.28.010, 15.36.010.)
71. **Dangerous Electrical Wiring. Exposed Electrical Wiring.** Exposed wiring poses a significant risk of electrical shock or fire. Abate all exposed wiring in the bathroom on the second level storage area which is accessed by the stairway behind the register. Exposed wiring increases the risk of fire starting and places the lives and property of neighboring properties in danger. (H&S, § 17920.3(d); CBC, § 110.1; CFC, §§ 605.1, 605.6; UCADB, § 302(13), (16); SMC, §§ 15.12.010, 15.24.030(b)(4), 15.28.030.)
72. **Illegal Electrical Installation.** Electrical installations were completed without a permit, including can lighting and the electrical sub-panels. Unpermitted electrical installation often contains serious latent defects that can create a severe life and safety risk due to risk of fire and shock. Obtain appropriate permits to repair and replace the electrical according to building code standards. (H&S, § 17920.3(d); CBC, §§ 105.1, 110.1; CFC, § 605.1; UCADB, § 302(9), (13); SMC, §§ 15.04.250, 15.08.010, 15.12.010, 15.24.030(b)(4), 15.28.010.)
73. **Dangerous Electrical Wiring. Missing Electrical Panel Covers.** There are missing electrical sub-panel covers. Replace all missing or damaged electrical sub-panel covers to meet building code standards. Missing or exposed electrical sub-panels increases the risk of fire and electrical shock to occupants using the switches and outlets. Install all missing covers on the electric sub-panels. (H&S, § 17920.3(d); CBC, § 110.1; CFC, § 605.6; UCADB, § 302(13), (16); SMC, §§ 15.08.010, 15.24.030(b)(4), 15.28.030.)



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74. **Means of Egress. Emergency Lights.** There are missing illuminated "Exit" signs and exit lighting. This will prevent occupants from locating exit doors in emergency and creates a substantial fire hazard. Repair and replace emergency lights. (H&S, § 17920.3(a)(10), (1); CBC, § 110.1; CFC, §§ 604.6, 1013.3; UCADB, § 302(2), (13); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(1)(x), (b)(12), 15.28.010.)
75. **Accumulation of Grease. Fire Hazard.** There is a significant buildup of grease in the kitchen cooking vents, kitchen exhaust hood, and cooking appliances. This creates a substantial fire hazard. Clean the grease from the flue cooking vent and maintain in a neat and sanitary manner. (HSC, § 17920.3(h); CBC, § 110.1; CFC, § 904.12.6; UCADB, § 302(9), (13), (16); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(8), 15.28.010.)
76. **Lack of Fire Extinguishers. Fire Hazard.** The kitchen is missing the required fire extinguishers, or the existing extinguishers are not those required to be installed in a commercial kitchen operation in the event of grease or similar fire. Inoperable fire extinguishers are a fire hazard and pose a danger to the structure and occupants. (HSC, § 17920.3(h); CBC, § 110.1; CFC, § 904.12.5.2; UCADB, § 302(9), (13), (16); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(8), 15.28.010.)
77. **Insufficient Fire-Resistance Construction. Fire Hazard.** The business uses a plastic storage cover plate in the attic storage area rather than the approved fire-rated cover. This creates a substantial fire hazard and makes it easier for fire to spread in the kitchen and throughout the building. (HSC, § 17920.3(h); CBC, § 110.1; CFC, § 703.1; UCADB, § 302(9), (13), (16); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(8), 15.28.010.)
78. **Insufficient Fire-Resistance Construction. Damaged Sheetrock. Fire Hazard.** There is damaged sheetrock behind the register. This creates a substantial fire hazard and makes it easier for fire to spread in throughout the building. Repair or replace damaged sheetrock. (H&S, § 17920.3(i); CBC, § 110.1; CFC, § 703.1; SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(9).)
79. **Dangerous Electrical Wiring. Missing Electrical Receptacle Covers.** There are missing or damaged electrical receptacle cover plates throughout the business. Replace all missing or damaged electrical receptacle covers to meet building code standards. Missing or exposed electrical receptacles increases the risk of fire and



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electrical shock to occupants using the switches and outlets. (H&S, § 17920.3(d); CBC, § 110.1; CFC, § 605.6; UCADB, § 302(13), (16); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(4), 15.28.030.)

80. **Insufficient Clearance Space Around Electrical Sub-Panels.** There must be appropriate clearance around electrical sub-panels throughout the business. The electrical installation within the foot print of the kitchen exhaust hood at the cooking area is not correctly installed. The current installation of the electrical panel below the exhaust hood is not an approved installation. The proper working clearance of 3 feet in front of all electrical panels, disconnects, fuse panels, etc. must be provided. Lack of clearance creates a higher risk of fire. Remove all materials 3 feet from front of the equipment to a width of the panel and grade level to 6 feet, 6 inches. (CBC, § 110.1; CEC, § 110.26; UCADB, § 302(9), (13); SMC, §§ 15.08.010, 15.28.010, 15.36.010.)
81. **Dilapidated and Deteriorated Floors, Ceilings, and Walls.** There is damaged and deteriorated ceilings, floors, and walls throughout the business, including the kitchen, the storage area, the bathrooms, and the stairway. Replace and repair all dilapidated ceiling, wall, and floor elements. (H&S, § 17920.3(i); CBC, § 110.1; CFC, § 703.1; UCADB, § 302(8), (9), (13); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(9), 15.28.010.)
82. **Means of Egress. Damaged Handrails and Stairway.** There are improperly installed hand rails and damaged tiles on the stairway behind the register. Repair or replace hand rails and stairs according to building code standards. (H&S, § 17920.3(i), (l); CBC, §§ 116.1, 1014.4; UCADB, § 302(2), (13); SMC, §§ 15.08.010, 15.24.030(b)(9), (b)(12), 15.28.010.)
83. **Accumulation of Trash, Debris, and Rubbish. Fire Hazard.** There is an accumulation of garbage, junk, debris, combustible materials, stored materials, and similar items creating a tripping hazard in the second-floor storage area, the electrical rooms, the mechanical rooms, the stairs, and other locations throughout the business. Areas of the business are being used for unpermitted storage areas. The accumulation of junk and debris creates unsanitary conditions and substantially increases the risk of fire due to the presence of combustible materials. (HSC, § 17920.3(j); CBC, § 110.1; CFC, §§ 304.1, 315.3; UCADB, § 302(13); SMC, §§ 15.08.010, 15.12.010, 15.24.030(b)(10), 15.28.010.)



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84. **Lack of Automatic Sprinkler System. Change of Use. Fire Hazard.** In an existing building where a change of use occurs and the new use is more restrictive than the previous use or the intended use of the building changes, an automatic sprinkler system shall be installed. In existing buildings, other than residential, greater than 6,000 square feet in area, and repairs and/or alterations are performed in excess of 10%, an automatic sprinkler system shall be installed. (H&S, § 17920.3(m); CBC, § 110.1; CFC, § 903.2.1.2; UCADB, § 302(13); SMC, §§ 15.08.010, 15.12.040, 15.24.030(b)(13), 15.28.010.)

Pursuant to the H&S, the CBSC, the CBC, the CFC, the UCADB, the CPC, the UHC, and the SMC, the buildings and structures on the Nuisance Property are dangerously substandard and constitute public nuisances.

Therefore, pursuant to H&S section 17980.6, you are hereby ordered to repair or abate all code violations on the Nuisance Property, including, but not limited to, all unlawful conditions identified herein. Work to abate these unlawful conditions must begin immediately and must be completed within 15 days ("Compliance Completion Deadline") or you will be subject to further legal action.

The legal consequences for failure to initiate rehabilitation and correct the unlawful conditions identified above by the Compliance Completion Deadline may include administrative fines, criminal prosecution, abatement warrants, and civil remedies such as injunctions, penalties, and the application for the appointment of a receiver over the Nuisance Property. Furthermore, you will be held liable for all costs, fees, and expenses, including all inspections costs, investigation costs, enforcement costs, abatement costs, repair costs, rehabilitation expenses, court costs, litigation expenses, prosecution expenses, attorneys' fees, and administrative expenses, incurred by the City in inspecting, identifying, investigating, enforcing, prosecuting, repairing, and abating all unlawful conditions on the Nuisance Property.

Repair or abatement of some of the unlawful conditions identified above may require you to obtain air quality, building, and demolition permits. You are obligated to obtain these permits in time to complete the rehabilitation of the Nuisance Property by the Compliance Completion Deadline.



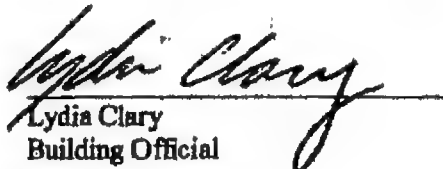
CITY OF STOCKTON

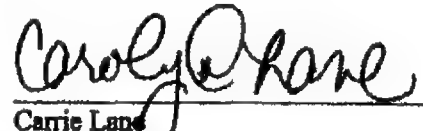
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Pursuant to H&S section 17980.6(c), you are hereby notified that you cannot retaliate against lessees of the Nuisance Property pursuant to Civil Code section 1942.5. Pursuant to H&S section 17980(d), you are hereby notified that, in accordance with Revenue and Taxation Code sections 17274 and 24436.5, a tax deduction may not be allowed for interest, taxes, depreciation, or amortization paid or incurred in this taxable year for the Nuisance Property.

If you have any questions regarding this N&O, you may contact the undersigned.


Lydia Clary
Building Official
City of Stockton
209-937-8842


Carrie Lane
Code Enforcement Officer II
City of Stockton
209-937-8369



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SERVICE LIST

Christopher J. Bennitt
P.O. Box 8346
Stockton, California 95208

Christopher J. Bennitt
1825 Pacific Avenue
Stockton, California 95204

Christopher J. Bennitt
1829 Pacific Avenue
Stockton, California 95204

Christopher J. Bennitt
1827 E. Alpine Avenue
Stockton, California 95205

Christopher J. Bennitt
1624 E. Alpine Avenue
Stockton, California 95205

BAC Community Bank
*c/o William R. Trezza, Agent for Service of
Process*
2021 West March Lane, Suite 2D
Stockton, California 95207

Christopher J. Bennitt
1827 Pacific Avenue
Stockton, California 95204

Christopher J. Bennitt
1831 Pacific Avenue
Stockton, California 95204

Christopher J. Bennitt
4643 Quail Lakes Drive, Suite 123
Stockton, California 95207

Christopher J. Bennitt
121 W. Walnut Street
Stockton, California 95204

London, Susie

From: Vignolo, Anthony
Sent: Tuesday, November 07, 2017 10:58 AM
To: London, Susie
Subject: FW: 1825 Pacific Avenue/Christopher Bennitt
Attachments: Notice and Order.pdf

-----Original Message-----

From: Susana Wood [mailto:Susana.Wood@stocktonca.gov]
Sent: Thursday, September 07, 2017 6:20 PM
To: Vignolo, Anthony
Cc: London, Susie; Steinheimer, Max; Angel Solis; 'Michael Hakeem'
Subject: RE: 1825 Pacific Avenue/Christopher Bennitt

Mr. Vignolo,

I have been in meetings all day and have only just checked my emails and this is simply the first opportunity I've had to respond to you. I apologize for the delay.

I strongly urge you to review the statutes cited in the Legal Notice and Order to Repair or Abate so that you are able to advise your client as to its purpose. Per your request, I am attaching a copy hereto. Had I known you didn't have it and had not yet read it when you contacted me yesterday, I would have sent it then.

The City has consistently requested a set of certified as-built plans for the building. Without the plans, there can be no intelligent conversation about what work must be done at the building. Your client has received very specific instructions from our building official regarding submittal of those certified as-built plans and they are looking forward to receiving them tomorrow.

Susana Alcala Wood
Assistant City Attorney
Office of the City Attorney
City of Stockton
425 North El Dorado Street
2nd Floor
Stockton, CA 95207
(209) 937-8333
susana.wood@stocktonca.gov

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-----Original Message-----

From: Vignolo, Anthony [mailto:avignolo@DowneyBrand.com]

Sent: Thursday, September 7, 2017 3:09 PM

To: Susana Wood <Susana.Wood@stocktonca.gov>

Cc: London, Susie <slondon@DowneyBrand.com>; Steinheimer, Max <msteinheimer@DowneyBrand.com>; Angel Solis <Angel.Solis@stocktonca.gov>; 'Michael Hakeem' <mhakeem@hemlaw.com>

Subject: RE: 1825 Pacific Avenue/Christopher Bennitt

Ms. Wood,

First, I do not yet have a copy of the "Legal Notice And Order To Repair Or Abate" dated September 5, 2017. I received a photograph of the first page of the posting from my client. I would appreciate it if you would kindly email to me a courtesy copy of the entire notice.

Second, following up on my emails from yesterday, the latest of which (below) I have not yet received a response, the notice states a "Compliance Completion Deadline" of September 20, 2017. While such a notice might be appropriate when specific items in need of repair have been specifically identified by the City, that is not the case here. Rather, I understand that the City is requiring that my client proceed with the submission of certain plans and go through the plan-check process. In fact, the June 7, 2017, Notice to Vacate, as well as the subsequent notice issued by the City on August 3, 2017, prohibit my client from making any repairs whatsoever that would otherwise require a permit.

In short, setting aside that "the message" of the notice seems to wholly disregard our agreed-upon plan for proceeding, as well as the extensive work, discussions and collaboration over recent weeks going through the plan-check process, the 15-day "repair" period under the notice is perplexing. Frankly, it seems the City is attempting to create the public appearance that my client is delaying simple "repairs," all while the City is simultaneously requiring that my client proceed through a time consuming and largely redundant plan-check process. Of course, my client would love to abbreviate such a process and expedite this matter to the fullest extent so that the business suites can be re-occupied. If the City believes that the "repairs" at issue in the notice are capable of being made within 15 days, and the business suites can thereby be immediately re-occupied after such 15-day period, I assume the City would be in agreement to spearhead such repairs at my client's expense and return the property to my client 15 days later in a state ready for occupancy, but please confirm. Otherwise, we optimistically look forward to tomorrow's submittal and subsequent expedited plan check so that businesses may soon resume operations at the property.

Regards,

Anthony L. Vignolo

Downey Brand LLP
3425 Brookside Road, Suite A
Stockton, CA 95219
209.473.6450 Main
209.472.3920 Direct
209.472.3921 Fax
avignolo@downeybrand.com
www.downeybrand.com

-----Original Message-----

From: Vignolo, Anthony
Sent: Wednesday, September 06, 2017 5:42 PM
To: 'Susana Wood'
Cc: London, Susie; Steinheimer, Max; 'Angel Solis'; 'Michael Hakeem'
Subject: RE: 1825 Pacific Avenue/Christopher Bennitt

Ms. Wood,

Thank you for your email, but I want to be sure we are on the same page. The Notice states that my client has 15 days (until September 20) to repair the alleged violations. We have had several meetings with City representatives in an attempt to agree on a protocol for addressing the City's concerns, and our submission of plans this Friday will begin the plan check process (which process will certainly take more than 15 days).

When you say that the Notice is necessary to "prepare for filing" a lawsuit for the appointment of a receiver, are you saying that such a lawsuit will be filed even if my client proceeds in good faith with the agreed-upon protocol, including the submission this Friday? In other words, if the City does not intend to honor the agreed upon protocol, please let me know now so I can advise my client accordingly.

Regards,

Anthony Vignolo

Sent with Good (www.good.com)

-----Original Message-----

From: Susana Wood [mailto:Susana.Wood@stocktonca.gov]
Sent: Wednesday, September 06, 2017 05:28 PM Pacific Standard Time
To: Vignolo, Anthony
Cc: London, Susie; Steinheimer, Max; Angel Solis; Michael Hakeem
Subject: RE: 1825 Pacific Avenue/Christopher Bennitt

Dear Mr. Vignolo:

I am responding to your email to correct a number of assertions made within it – the most important correction is related to the purpose of the Legal Notice and Order to Repair or Abate which was served on your client and posted on the property on September 5, 2017. I will refer you to the Notice and its terms which provides the specific actions to be taken, as well as reference to the applicable law.

As I advised you, this Notice is a required precursor to the City proceeding with filing an action and seeking the appointment of a Court Receiver. Should such actions become necessary due to a failure by your client to comply with its' requirements, the City can and will proceed forward with pursuing all available remedies, including seeking the appointment of a Court receiver to address all of the outstanding code violations on the property.

I further expressed to you that unfortunately, due to Mr. Bennit's poor track record on following through with addressing the code violations on this property specifically, including violating the terms of the written Stipulation for repairs that he signed, it is necessary for the City to prepare for filing such an action to ensure that the building is repaired and made safe for tenants, and have the building re-occupied as quickly as possible.

Susana Alcala Wood

Assistant City Attorney

Office of the City Attorney

City of Stockton

425 North El Dorado Street

2nd Floor

Stockton, CA 95207

(209) 937-8333

susana.wood@stocktonca.gov <<mailto:susana.wood@stocktonca.gov>>

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From: Vignolo, Anthony [<mailto:avignolo@DowneyBrand.com>]

Sent: Wednesday, September 6, 2017 4:19 PM

To: Susana Wood <Susana.Wood@stocktonca.gov>

Cc: London, Susie <slondon@DowneyBrand.com>; Steinheimer, Max <msteinheimer@DowneyBrand.com>; Angel Solis <Angel.Solis@stocktonca.gov>

Subject: 1825 Pacific Avenue/Christopher Bennitt

Ms. Wood:

Thank you for taking my call today. As I mentioned, the City posted at the property a "Legal Notice And Order To Repair Or Abate" dated September 5, 2017, which states a "Compliance Completion Deadline" of September 20, 2017. I inquired as to the purpose of this "Notice" in light of the recent meetings between City representatives and my client's design professionals. Specifically, I understand that, at the most recent meeting on August 21, 2017, the parties were able to reach an agreement that includes the following:

- An initial submittal will be presented to the City and will identify a scope of work to address life-safety components associated with the as-built conditions of the southern portion of the building only. This submittal will be treated as a "shell improvement package." Subsequent to the August 21 meeting, my client's architect has stated that this submittal will be made to the City on September 8, 2017, which I understand is still on schedule to occur;
- Specific tenant improvement permit submittals will be prepared for each space separately; and
- Once the southern portion of the building is addressed, it is anticipated that Avelar and Associates will proceed to evaluate the northern portion of the building following similar protocol.

I inquired as to the purpose of the above-referenced "Notice" in light of the foregoing protocol agreed upon by the parties. You stated that the "Notice" is intended to preserve the City's rights so thurther delay to make any necessary repairs in the event that Mr. Bennitt does not follow through with the protocol set forth above. You stated that the City is interested in ensuring that this matter proceeds expeditiously so that the business suites can be re-occupied.

In short, it is my understanding that if my client and his design professionals continue to move this matter forward expeditiously and make progress in accordance with the protocol set forth above, the City will refrain from taking any action under the "Notice," but please confirm that my understanding is correct.

Regards,

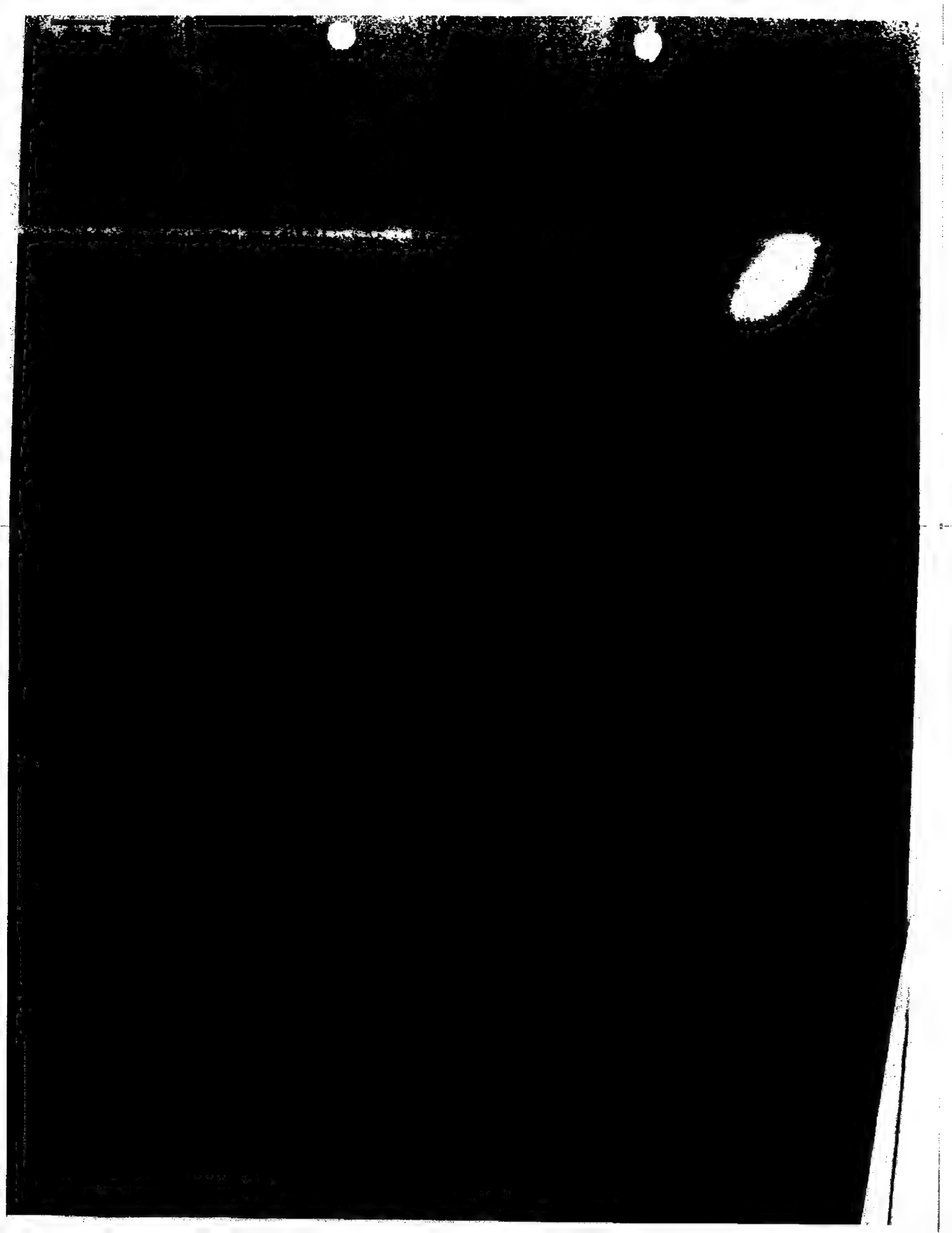
Anthony L. Vignolo

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209.472.3921 Fax
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<http://www.downeybrand.com>

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EXHIBIT 17



London, Susie

-----Original Message-----

From: Amanda Pope [mailto:apope@silverwrightlaw.com]

Sent: Tuesday, October 24, 2017 12:04 PM

To: Vignolo, Anthony

Subject: RE: Stockton - 1825 Pacific Avenue - Notice of Filing Petition

Mr. Vignolo,

Thank you for agreeing to accept service. We are mailing the 3 Day Notice to you along with a N&A of Receipt. I have also attached a copy of the 3 Day Notice to this email along with the N&A. If you could please sign and scan back to me, I would appreciate it.

Thank you,

Amanda

Amanda A. Pope, Esq.
Senior Associate
Silver & Wright, LLP
Attorneys at Law
3 Corporate Park, Suite 100
Irvine, CA 92606
(949) 385-6431
(949) 200-6725 – Direct Line
(949) 385-6428 – Fax
APope@SilverWrightLaw.com

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—Original Message—

From: Vignolo, Anthony [mailto:avignolo@DowneyBrand.com]

Sent: Monday, October 23, 2017 1:07 PM

To: Amanda Pope <apope@silverwrightlaw.com>

Cc: Susana Wood <Susana.Wood@stocktonca.gov>; Curtis Wright <cwright@silverwrightlaw.com>; John Fujii <jfujii@silverwrightlaw.com>; Steinheimer, Max <msteinheimer@DowneyBrand.com>

Subject: RE: Stockton - 1825 Pacific Avenue - Notice of Filing Petition

Ms. Pope:

My client was indeed in his office on the telephone when he heard a person knocking on his door. He obviously did not know it was a process server until he later discovered the notice posted on the door. My client has never attempted to evade service, and I'm at a loss to understand why your office did not attempt to contact me first and request that I accept service on behalf of my client. I assume that the City informed you that my office has been representing Mr. Bennitt on this matter for the past few years. And, yes, I am authorized to accept service of the petition through a Notice & Acknowledgment of Receipt.

We can agree to disagree as to the nature of the alleged violations, but the plain fact is that the written preliminary report of our licensed design professionals makes clear that the City's evacuation tactic was "unnecessarily heavy-handed" and that, other than minor issues, there were no life-safety issues that required the evacuation of the property. Regardless, despite disagreement between City representatives and our design professionals as to the nature, scope, and extent of the issues, my office, my client, and our design professionals have fully attempted to cooperate with the City. In that regard, we have spent countless hours on this matter meeting with City representatives, inspecting the property, and addressing the City's concerns since the evacuation order was issued. We agreed upon a protocol with the City, which was subsequently documented through correspondence, and we have been diligently following that protocol, which includes the various submissions referenced in my prior correspondence to Ms. Alcalá-Wood.

On September 5, 2017, the City gave its first indication that it was abandoning the agreed-upon protocol when it issued a "Legal Notice And Order To Repair Or Abate," which identified a "Compliance Completion Deadline" of September 20, 2017. By written correspondence to Ms. Alcalá-Wood dated September 7, 2017, I reminded her that the June 7, 2017, Notice to Vacate, as well as the subsequent notice issued by the City on August 3, 2017, prohibit my client from making any repairs whatsoever that would otherwise require a permit. I also stated in that correspondence:

avignolo@downeybrand.com
www.downeybrand.com

-----Original Message-----

From: Amanda Pope [mailto:apope@silverwrightlaw.com]
Sent: Thursday, October 19, 2017 8:30 AM
To: Vignolo, Anthony
Cc: Susana Wood; Curtis Wright; John Fujii
Subject: Stockton - 1825 Pacific Avenue - Notice of Filing Petition

Mr. Vignolo,

I am responding to your email below sent to Susana Alcala-Wood regarding the notice I sent your client. This notice was not back dated as you allege. It was sent to a process server and only reached your client after the date of the notice because your client was not present to accept service. To save time and litigation expenses, are you authorized to accept service on behalf of your client? The process server was forced to leave a copy of the notice because your client refused to answer the door and since personal service is required here, we are still attempting to personally serve your client, which will only increase the costs of litigation for your client. Please let me know if you are willing to accept service for your client and I will prepare a Notice & Acknowledgement of Receipt. If you cannot accept service, we will send you courtesy copies as requested.

As indicated in the notice, the City is proceeding with litigation given the lack of progress and compliance on your client's property due to the limited scope and slow pace of Mr. Bennett's rehabilitation efforts to date. The City is now protecting its rights to proceed with a nuisance abatement action and advancing that action as necessary until it is confident that all violations will be thoroughly, properly, and expeditiously rehabilitated. Despite your assertions to the contrary, the violations existing upon the property are not "minor" and such characterization further supports the City's lack of confidence that your client is taking this matter appropriately seriously since the violations involve extremely serious life-threatening health and fire safety issues and have been ongoing without swift remediation.

Thank you,

Amanda

Amanda A. Pope, Esq.
Senior Associate
Silver & Wright, LLP
Attorneys at Law
3 Corporate Park, Suite 100
Irvine, CA 92606
(949) 385-6431
(949) 200-6725 - Direct Line
(949) 385-6428 - Fax
APope@SilverWrightLaw.com

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"In short, setting aside that 'the message' of the notice seems to wholly disregard our agreed-upon plan for proceeding, as well as the extensive work, discussions and collaboration over recent weeks going through the plan-check process, the 15-day 'repair' period under the notice is perplexing. Frankly, it seems the City is attempting to create the public appearance that my client is delaying simple 'repairs,' all while the City is simultaneously requiring that my client proceed through a time consuming and largely redundant plan-check process. Of course, my client would love to abbreviate such a process and expedite this matter to the fullest extent so that the business suites can be re-occupied. If the City believes that the 'repairs' at issue in the notice are capable of being made within 15 days, and the business suites can thereby be immediately re-occupied after such 15-day period, I assume the City would be in agreement to spearhead such repairs at my client's expense and return the property to my client 15 days later in a state ready for occupancy, but please confirm. Otherwise, we optimistically look forward to tomorrow's submittal and subsequent expedited plan check so that businesses may soon resume operations at the property."

I have never received any confirmation that the City would be willing to spearhead the repairs and return the property to my client 15 days later in a state ready for occupancy. In short, the City has made clear in writing that my client is not allowed to do any work requiring a permit until a permit is obtained, and we have been doing everything reasonably possible to obtain the necessary permits so that the work being required by the City can be performed. Perhaps you or your client will explain to me what a receiver would do that is not currently being done by my client and his design professionals? If the City would give us guidance on how it believes this matter should be handled, aside from my client following the agreed-upon protocol as he has been doing, perhaps we could all avoid costly and time consuming litigation.

My client has no reason to prolong this process. He is losing in excess of \$30,000 per month in rental income. Despite our belief that the City's actions were unwarranted and that the City should be liable for these damages, we made a conscious decision in June to cooperate with the City, believing that such course would be more efficient than litigation in getting the property re-occupied. It is now clear that, much like the City issued its June 7 evacuation order without notice to my client or the tenants after planning the tactic for several months behind the scenes, the City strung my client down a road without any intention of performing under the agreed-protocol, and is now changing course despite my client's diligence and significant investment in this process.

Fortunately, everything is documented, and our cross-complaint against the City will be detailed and supported by the documentation. And when this matter again resurfaces in the public eye, the City can explain to the former tenants, their employees, and their families why this is being unnecessarily delayed in the face of documentation establishing our diligence, and why the City is spending funds it does not have on unnecessary legal fees.

I again reiterate my prior request that the City preserve all evidence, and instruct all personnel who have had any involvement with this property to refrain from deleting emails with respect to this matter. My office has been down this road before, and much of the evidence from our case for Dr. Frank Portale against the City arising out of unlawful code enforcement activities - which resulted in the City paying in excess of a \$1.5MM settlement, as confirmed in the attached materials, after code enforcement officials gave highly damaging testimony - will be quite relevant here.

Regards,

Anthony L. Vignolo

Downey Brand LLP
3425 Brookside Road, Suite A
Stockton, CA 95219
209.473.6450 Main
209.472.3920 Direct
209.472.3921 Fax

London, Susie

From: Vignolo, Anthony
Sent: Tuesday, October 17, 2017 5:38 PM
To: 'Susana Wood'
Cc: London, Susie; Steinheimer, Max; 'Angel Solis'; 'Michael Hakeem'; 'William Parish'
Subject: RE: 1825 Pacific Avenue - Notice of Filing Petition

Ms. Wood,

To ensure that there were no delays while Mr. Garcia was on vacation, I understand that he received approval from John Swiegert last week to submit the documents with electronic signature. I also understand that Mr. Garcia will therefore be submitting the drawings by the end of this week. Since the City's second round of plan check comments involved rather minor issues, I anticipate that there will be no further issues with the submission and that the permit will be issued promptly.

Regards,

Anthony Vignolo

Sent with Good (www.good.com)

-----Original Message-----

From: Vignolo, Anthony
Sent: Tuesday, October 17, 2017 05:08 PM Pacific Standard Time
To: 'Susana Wood'
Cc: London, Susie; Steinheimer, Max; Angel Solis; 'Michael Hakeem'; 'William Parish'
Subject: 1825 Pacific Avenue - Notice of Filing Petition

Ms. Wood,

I was informed today by my client that the attached letter from attorney Amanda Pope was posted today (although the letter is backdated to October 11, 2017) at my client's office. The letter states that the City will be filing a petition for the appointment of a receiver "to abate the substandard conditions" alleged to exist at my client's property at 1825 Pacific Avenue. I'm rather perplexed, as I understood that my client and the City have been moving forward and making progress with respect to the City's concerns.

On August 23, 2017, my client's architect, Joe Garcia, met with City representatives, including Lydia Clary, Phil Simon, John Freitas and John Schweigert to further discuss the plan with respect to the Suite 1 "tenant improvement" package and the "shell improvement plan" for the southern portion of the property. On September 8, 2017, as promised, Mr. Garcia submitted to the City the tenant improvement package for Suite 1 and the "shell improvement plan" for the entire southern portion of the property. On September 22, 2017, Mr. Garcia spoke with John Schweigert and John Freitas to review a number of their plan check comments associated those submittals. Mr. Garcia then re-submitted those documents on October 6, 2017, and addressed the City's plan check comments after meeting that same day with City representatives Lydia Clary, John Freitas and John Schweigert. Mr. Garcia recently received the City's second round of plan check comments and will be addressing those shortly upon his return from vacation.

I do not know whether the attached letter is the result of miscommunication between the City Attorney's office and the City's building department, but please let me know if the City plans to proceed with the petition referenced in the letter. Also, as I requested previously, please ensure that I am copied on all correspondence that is sent to my client or posted at the property or at his office.

Regards,

Anthony L. Vignolo

Downey Brand LLP
3425 Brookside Road Suite A
Stockton, CA 95219
209.473.6450 Main
209.472.3920 Direct
209.472.3921 Fax
avignolo@downeybrand.com
www.downeybrand.com

EXHIBIT 18

From: John Schweigerdt [mailto:John.Schweigerdt@stocktonca.gov]

Sent: Monday, October 30, 2017 11:35 AM

To: Joe Garcia <JGarcia@RAvelar.com>

Cc: Lydia Clary <Lydia.Clary@stocktonca.gov>; John Freitas <John.Freitas@stocktonca.gov>; Elizabeth Harris <eharris@RAvelar.com>

Subject: Empire Building - 1825 Pacific Ave

Good Morning Joseph,

The permits for the shell improvements (17-05937) and suite 1 tenant improvements (17-05942) may be picked up at your convenience pending the following items:

Permit 17-05937 (Shell):

1. A completed and signed special inspection and testing agreement, see attached. Please bring the signed form at time of permit issuance.
2. The contractor picking up the permit will need a current City of Stockton business license.
3. The individual picking up the permit will need to have a letter of authorization from the licensed contractor unless they are on the personnel list on the CSLB website.
4. Permit fees in the amount of \$2,634.36.

Permit 17-05942 (Suite 1):

1. The contractor picking up the permit will need a current City of Stockton business license.
2. The individual picking up the permit will need to have a letter of authorization from the licensed contractor unless they are on the personnel list on the CSLB website.
3. Permit fees in the amount of \$1,212.73.

Please note that the suite 1 permit cannot be issued ahead of the shell permit.
Attached is a calendar of our office hours.

Best Regards,

John Schweigerdt, CASp, CFM
Plan Checker II - Building Division



EXHIBIT 19

From: Joe Garcia [<mailto:JGarcia@RAvelar.com>]

Sent: Friday, November 3, 2017 2:04 PM

To: John Schweigerdt <John.Schweigerdt@stocktonca.gov>; Lydia Clary <Lydia.Clary@stocktonca.gov>

Cc: John Freitas <John.Freitas@stocktonca.gov>; Elizabeth Harris <eharris@RAvelar.com>; Vignolo, Anthony <avignolo@DowneyBrand.com>; Christopher Bennitt <Empire@stocktonempire.com>

Subject: RE: Empire Building - 1825 Pacific Ave

Hello Lydia and John,

It is my understanding that Dave Olson of Olson Construction went to pick up the permits today with all required forms, information and payment (as listed below) as was told by Lydia that he would not be able to secure the permit due to the fact that there was a "Litigation Hold" on the file. Can you please clarify what this "hold" means and why he is not unable to pick up the permits? We are not aware of any additional requirements. After all the efforts we have all collectively made to get this point, we certainly want to make sure that the process continues in reasonable fashion. Please advise.

Regards,

Joe

London, Susie

From: Amanda Pope <apope@silverwrightlaw.com>
Sent: Monday, November 06, 2017 2:02 PM
To: Joe Garcia
Cc: Susana Wood; John.Schweigerdt@stocktonca.gov; Lydia.Clary@stocktonca.gov; John.Freitas@stocktonca.gov; Elizabeth Harris; Vignolo, Anthony; Empire@stocktonempire.com; Curtis Wright; John Fujii
Subject: Stockton - Empire Building (1825 Pacific Ave) - Permit Inquiry

Good afternoon Mr. Garcia,

Our firm represents the City of Stockton regarding the Empire property and I am responding to the email you sent City staff below. The City has filed a nuisance abatement action against the Mr. Bennitt as owner of the property and I have already been in contact with Mr. Vignolo as counsel for Mr. Bennitt. Both gentlemen are copied on this email since they were originally included by you in your email to staff.

The City is hopeful to resolve this matter without the need for further litigation. However, to do so, the City needs you and Mr. Bennitt to submit a comprehensive rehabilitation plan for the entire property with a detailed breakdown of the scope of work addressing all violations, and the corresponding deadline by which you commit to have each line item in the scope of work completed. Due to the extremely substandard and dangerous state of the property, and the lack of diligent and expeditious rehabilitation efforts to date, the City will not be issuing permits for any work on the property until it has an enforceable commitment from Mr. Bennitt for complete and expeditious rehabilitation of the entire property. To be clear, negotiating any type of agreement with Mr. Bennitt would require a rehab plan for the entire property. Until such an agreement is reached, the City will proceed with its action to force the complete and expeditious rehabilitation of the entire property through its nuisance abatement litigation.

Thank you,

Amanda

Amanda A. Pope, Esq.
Senior Associate
Silver & Wright, LLP
Attorneys at Law
3 Corporate Park, Suite 100
Irvine, CA 92606
(949) 385-6431
(949) 200-6725 - Direct Line
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EXHIBIT 20



RICHARD AVELAR & ASSOCIATES ARCHITECTS

318 HARRISON STREET, SUITE 103 OAKLAND CA 94607 (510) 893-5501 FAX (510) 893-5874

A California Corporation TAX ID: 94-2863677

July 20, 2017

Invoice No: 2017.206.00 - 1

Due Date: August 19, 2017

Anthony Vignolo
Downey Brand
3425 Brookside Rd, Ste A
Stockton, CA 95219

RE: JOB # 17206 -- Stockton v. Bennitt
[Time plus Expenses]

Professional Architectural Services from June 1, 2017 to June 30, 2017

Professional Personnel

	Hours	Amount
Principal	43.25	15,542.50
CAD Operator	7.00	805.00
Total	50.25	16,347.50
Total Labor		16,347.50

Total This Invoice \$16,347.50

Unpaid Invoices

Number	Date	Balance
1	6/16/2017	-2,500.00
Total		-2,500.00

Account Total Due \$13,847.50

Billings to Date

	Current	Prior	Total	Received	A/R Balance
Labor	16,347.50	0.00	16,347.50		
Totals	16,347.50	0.00	16,347.50	2,500.00	13,847.50

If you have questions, please contact us by telephone at (510) 893-5501, Option 4 or via e-mail at RAAaccounting@ravelar.com. For information on how to pay via credit card, please email our Accounting Dept at the email provided.

Billing BackupRICHARD AVELAR & ASSOCIATES,
ARCHITECTS

Invoice 1 Dated 7/20/2017

Professional Personnel

		Hours		Amount
Principal				
	JG-Principal Architect			
4 - Garcia, Joseph	6/13/2017	1.00	310.00	310.00
	Review violation notice document			
4 - Garcia, Joseph	6/19/2017	2.00	310.00	620.00
	prepare for site inspection			
4 - Garcia, Joseph	6/20/2017	7.00	310.00	2,170.00
	conduct site inspection			
4 - Garcia, Joseph	6/22/2017	1.00	310.00	310.00
	technical support			
4 - Garcia, Joseph	6/26/2017	1.00	310.00	310.00
	code research, review violations list			
4 - Garcia, Joseph	6/27/2017	.25	310.00	77.50
	review letter			
TS-Principal Construction Consultant				
10 - Stokes, Timothy	6/12/2017	1.00	380.00	380.00
	review documents; participate in telcon with client			
10 - Stokes, Timothy	6/13/2017	.50	380.00	190.00
	review documents			
10 - Stokes, Timothy	6/19/2017	4.00	380.00	1,520.00
	review Notice of Violation list and create inspection matrix			
10 - Stokes, Timothy	6/20/2017	7.50	380.00	2,850.00
	participate in site inspection and data organization			
10 - Stokes, Timothy	6/21/2017	4.50	380.00	1,710.00
	review documentation and develop issue response outline			
10 - Stokes, Timothy	6/22/2017	4.00	380.00	1,520.00
	develop draft report			
10 - Stokes, Timothy	6/23/2017	3.50	380.00	1,330.00
	develop- summary of past violation notices			
10 - Stokes, Timothy	6/26/2017	3.50	380.00	1,330.00
	develop draft response			
10 - Stokes, Timothy	6/27/2017	1.50	380.00	570.00
	develop preliminary report			
10 - Stokes, Timothy	6/28/2017	.50	380.00	190.00
	misc coordination; telcon with client			
LH-Principal Codes Consultant				
11 - Haughton, Lonnie	6/26/2017	.50	310.00	155.00
	Codes review and analysis with T.Stoke			
CAD Operator				
EH-CAD Operator I				
189 - Harris, Elizabeth	6/20/2017	5.00	115.00	575.00

Project	2017.206.00	Stockton v. Bennett	Invoice	1
	Site visit.			
189 - Harris, Elizabeth	6/26/2017	1.00	115.00	115.00
	Code research			
189 - Harris, Elizabeth	6/26/2017	1.00	115.00	115.00
	Code research.			
	Total	50.25		16,347.50
	Total Labor			16,347.50
			Total this Project	\$16,347.50
			Total this Report	\$16,347.50



RICHARD AVELAR & ASSOCIATES ARCHITECTS

318 HARRISON STREET, SUITE 103 OAKLAND CA 94607 (510) 893-5501 FAX (510) 893-5874

A California Corporation TAX ID:94-2863677

August 24, 2017

Invoice No: 2017.206.00 - 2

Due Date: September 23, 2017

Anthony Vignolo
Downey Brand
3425 Brookside Rd, Ste A
Stockton, CA 95219

RE: JOB # 17206 -- Stockton v. Bennett; Expert Services
[Time plus Expenses]

Professional Architectural Services from July 1, 2017 to July 31, 2017

Professional Personnel

	Hours	Amount
Principal	30.75	10,232.50
Support Staff	3.00	480.00
Total	33.75	10,712.50
Total Labor		10,712.50

Total This Invoice 10,712.50

Unpaid Invoices

Number	Date	Balance
1	7/20/2017	13,847.50
Total		13,847.50

Account Total Due \$24,560.00

Billings to Date

	Current	Prior	Total	Received	A/R Balance
Labor	10,712.50	16,347.50	27,060.00		
Totals	10,712.50	16,347.50	27,060.00	2,500.00	24,560.00

Billing Backup

Thursday, August 24, 2017

RICHARD AVELAR & ASSOCIATES,
ARCHITECTS

Invoice 2 Dated 8/24/2017

10:17:47 AM

Professional Personnel

		Hours		Amount
Principal				
JG-Principal Architect				
4 - Garcia, Joseph	7/12/2017	.50	310.00	155.00
review drawing files				
4 - Garcia, Joseph	7/17/2017	1.50	310.00	465.00
prepare for meeting, review documents				
4 - Garcia, Joseph	7/18/2017	6.00	310.00	1,860.00
prepare for and attend meeting with Attorney, client and City of Stockton officials				
4 - Garcia, Joseph	7/24/2017	.50	310.00	155.00
Telephone call with Apex Architects, prepare email correspondence				
4 - Garcia, Joseph	7/27/2017	5.00	310.00	1,550.00
prepare for and attend meeting with City of Stockton Building Officials				
4 - Garcia, Joseph	7/28/2017	.50	310.00	155.00
conference call with Attorney and Client				
TS-Principal Construction Consultant				
10 - Stokes, Timothy	7/5/2017	.50	380.00	190.00
Review misc project date; participate in telcon; develop preliminary findings				
10 - Stokes, Timothy	7/13/2017	.50	380.00	190.00
Review documentation and claim issues				
10 - Stokes, Timothy	7/17/2017	.50	380.00	190.00
prep for meeting				
10 - Stokes, Timothy	7/18/2017	5.50	380.00	2,090.00
prep for & participate in meeting				
10 - Stokes, Timothy	7/19/2017	.50	380.00	190.00
review documents; misc coordination				
10 - Stokes, Timothy	7/27/2017	.50	380.00	190.00
misc coordination				
10 - Stokes, Timothy	7/28/2017	1.50	380.00	570.00
prep for and participate in team telcon; review survey strategy with J Garcia				
10 - Stokes, Timothy	7/31/2017	.50	380.00	190.00
review documents and assist in preparation for site visit				
LH-Principal Codes Consultant				
11 - Haughton, Lonnie	7/17/2017	1.25	310.00	387.50
Prep and review for site inspection and meeting tomorrow				
11 - Haughton, Lonnie	7/18/2017	5.50	310.00	1,705.00
Prep and review / attend meeting in Stockton with City officials / travel				
Support Staff				
CB-Litigation Analyst				
38 - Brocchus, Christine	7/28/2017	3.00	160.00	480.00

Project	2017.206.00	Stockton v. Bennett: Expert Services	Invoice	2
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Review permit documents, City of Stockton permit website data, and photos.

Total	33.75	10,712.50	
Total Labor			10,712.50
	Total this Project		\$10,712.50
	Total this Report		\$10,712.50



RICHARD AVELAR & ASSOCIATES ARCHITECTS

318 HARRISON STREET, SUITE 103 OAKLAND CA 94607 (510) 893-5501 FAX (510) 893-5874

A California Corporation TAX ID:94-2863677

September 25, 2017

Invoice No: 2017.206.01 - 1

Due Date: October 25, 2017

Anthony Vignolo
Downey Brand
3425 Brookside Rd, Ste A
Stockton, CA 95219

RE: JOB # 17206.1 - Stockton v. Bennett: As-built Drawings
[Time plus Expenses]

Professional Architectural Services from August 1, 2017 to August 31, 2017

Professional Personnel

	Hours	Amount
Principal	12.50	3,875.00
Construction Consultant	34.75	3,996.25
Construction Technician	25.75	2,961.25
CAD Operator	159.25	17,731.25
Total	232.25	28,563.75
Total Labor		28,563.75

Reimbursable Expenses

Mileage		72.50	
Total Reimbursables	1.0 times	72.50	72.50
Total This Invoice:			<u>28,636.25</u>

Billings to Date

	Current	Prior	Total	Received	A/R Balance
Labor	28,563.75	0.00	28,563.75		
Expense	72.50	0.00	72.50		
Totals	28,636.25	0.00	28,636.25	0.00	28,636.25

Billing Backup

Monday, September 25, 2017

RICHARD AVELAR & ASSOCIATES,
ARCHITECTS

Invoice 1 Dated 9/25/2017

2:27:35 PM

Professional Personnel

		Hours		Amount
Principal				
JG-Principal Architect				
4 - Garcia, Joseph	8/1/2017	.75	310.00	232.50
Prepare for inspection				
4 - Garcia, Joseph	8/2/2017	1.25	310.00	387.50
Prepare documents for field review on 8/3/17				
4 - Garcia, Joseph	8/3/2017	8.00	310.00	2,480.00
Site visit to document as-built conditions				
4 - Garcia, Joseph	8/4/2017	1.25	310.00	387.50
Review as-built drawing requirements with staff, conference call with Anthony Vignolo and Kit Bennett				
4 - Garcia, Joseph	8/10/2017	1.25	310.00	387.50
Review as-built drawings with staff, code analysis				
Construction Consultant				
BW-Construction Consultant II				
18 - Whitworth, Bob	8/1/2017	.75	115.00	86.25
Team meeting for coordination and plan of attack for site inspection/documentation.				
18 - Whitworth, Bob	8/3/2017	10.50	115.00	1,207.50
Participate in site inspection. Document building interior dimensions and MEP equipment locations.				
18 - Whitworth, Bob	8/4/2017	8.00	115.00	920.00
Prepare field notes and layout floor plan dimensions for transfer to CAD.				
18 - Whitworth, Bob	8/7/2017	9.75	115.00	1,121.25
Participate in site inspection. Document building interior dimensions and MEP equipment locations.				
18 - Whitworth, Bob	8/23/2017	5.75	115.00	661.25
Site visit for clarification of components for shell drawings.				
Construction Technician				
AJH-Construction Technician III				
132 - Herrick, Andrew	8/3/2017	10.50	115.00	1,207.50
Site Inspection				
132 - Herrick, Andrew	8/4/2017	.75	115.00	86.25
Prep for site visit - Scale sprinkler plan for verification				
132 - Herrick, Andrew	8/4/2017	2.00	115.00	230.00
Catalog photos and notes from site visit performed 8/3/17				
132 - Herrick, Andrew	8/7/2017	8.00	115.00	920.00
Site Inspection				
132 - Herrick, Andrew	8/9/2017	4.50	115.00	517.50
Catalog photos, notes, and stair sketches from site visit performed 8/7/17				
CAD Operator				
DFK-CAD Operator II				
182 - Fong, Donald	8/8/2017	8.00	105.00	840.00
Construction Documents				

Project	2017.206.01	Stockton v. Bennitt: As-built Dwgs	Invoice	1
182 - Fong, Donald	8/9/2017	8.00 105.00	840.00	
Construction Documents				
182 - Fong, Donald	8/10/2017	5.00 105.00	525.00	
Construction Documents				
182 - Fong, Donald	8/11/2017	8.00 105.00	840.00	
Construction Documents				
182 - Fong, Donald	8/14/2017	7.25 105.00	761.25	
Construction Documents				
182 - Fong, Donald	8/15/2017	5.50 105.00	577.50	
Construction Documents				
182 - Fong, Donald	8/16/2017	1.00 105.00	105.00	
Construction Documents				
182 - Fong, Donald	8/17/2017	2.00 105.00	210.00	
Construction Documents				
182 - Fong, Donald	8/21/2017	2.00 105.00	210.00	
Construction Documents				
182 - Fong, Donald	8/22/2017	8.00 105.00	840.00	
Construction Documents				
182 - Fong, Donald	8/23/2017	3.00 105.00	315.00	
Construction Documents				
182 - Fong, Donald	8/29/2017	.50 105.00	52.50	
Construction Documents				
EH-CAD Operator I				
189 - Harris, Elizabeth	6/20/2017	5.00 115.00	575.00	
Site visit [transferred to 17206.1 As-built]				
189 - Harris, Elizabeth	6/26/2017	2.00 115.00	230.00	
Code research [transferred to 17206.1 As-built]				
189 - Harris, Elizabeth	8/1/2017	4.50 115.00	517.50	
Code Search. Prepare plans for site visit. Team meeting.				
189 - Harris, Elizabeth	8/2/2017	1.50 115.00	172.50	
Prep for site visit.				
189 - Harris, Elizabeth	8/3/2017	10.50 115.00	1,207.50	
Site Visit.				
189 - Harris, Elizabeth	8/4/2017	6.50 115.00	747.50	
Begin preparing as-built drawings per site visit.				
189 - Harris, Elizabeth	8/4/2017	.50 115.00	57.50	
Prep for site visit.				
189 - Harris, Elizabeth	8/7/2017	8.00 115.00	920.00	
Site Visit.				
189 - Harris, Elizabeth	8/8/2017	6.50 115.00	747.50	
Prepare as-built drawings.				
189 - Harris, Elizabeth	8/9/2017	3.00 115.00	345.00	
Prepare as built drawings.				
189 - Harris, Elizabeth	8/10/2017	8.00 115.00	920.00	
Prepare as built drawings				
189 - Harris, Elizabeth	8/11/2017	8.00 115.00	920.00	
Prepare as built drawings				
189 - Harris, Elizabeth	8/14/2017	8.00 115.00	920.00	
Prepare as-built drawings				
189 - Harris, Elizabeth	8/15/2017	7.00 115.00	805.00	
Prepare as-built drawings.				

Project	2017.206.01	Stockton v. Bennett: As-built Dwgs			Invoice	1
189 - Harris, Elizabeth	8/16/2017	7.00	115.00	805.00		
Prepare as-built drawings.						
189 - Harris, Elizabeth	8/17/2017	6.00	115.00	690.00		
Prepare as-built drawings.						
189 - Harris, Elizabeth	8/18/2017	2.00	115.00	230.00		
Complete as-built drawings.						
189 - Harris, Elizabeth	8/21/2017	3.00	115.00	345.00		
Attend meeting with City of Stockton. In-house coordination.						
189 - Harris, Elizabeth	8/22/2017	2.00	115.00	230.00		
Modify as built drawings.						
189 - Harris, Elizabeth	8/23/2017	2.00	115.00	230.00		
Modify as built drawings.						
Total		232.25		28,563.75		
Total Labor						28,563.75
Reimbursable Expenses						
Mileage						
EX 0000003202	8/23/2017	Whitworth, Bob / 145.00 miles @ 0.50			72.50	
Total Reimbursables		1.0 times		72.50		72.50
Total this Project					\$28,636.25	
Total this Report					\$28,636.25	



RICHARD AVELAR & ASSOCIATES ARCHITECTS

318 HARRISON STREET, SUITE 103 OAKLAND CA 94607 (510) 893-5501 FAX (510) 893-5874

A California Corporation TAX ID: 94-2863677

September 25, 2017

Invoice No: 2017.206.02 - 1

Due Date: October 25, 2017

Anthony Vignolo
Downey Brand
3425 Brookside Rd, Ste A
Stockton, CA 95219

RE: JOB # 17206.2 -- Stockton v. Bennitt: Shell Improvement Plan Drawings
[Time plus Expenses]

Professional Architectural Services from August 1, 2017 to August 31, 2017

Professional Personnel

	Hours	Amount
Principal	16.00	4,960.00
Andrew Trias	13.00	1,495.00
CAD Operator	19.00	2,185.00
Total	48.00	8,640.00
Total Labor		8,640.00

Reimbursable Expenses

Reproduction Services	1.1 times	1,386.45	1,525.10
Misc Reimbursable Expense	1.0 times	531.00	531.00
Total Reimbursables		1,917.45	2,056.10

Total This Invoice \$10,696.10

Billings to Date

	Current	Prior	Total	Received	A/R Balance
Labor	8,640.00	0.00	8,640.00		
Expense	2,056.10	0.00	2,056.10		
Totals	10,696.10	0.00	10,696.10	0.00	10,696.10

Billing Backup

Monday, September 25, 2017

RICHARD AVELAR & ASSOCIATES,
ARCHITECTS

Invoice 1 Dated 9/25/2017

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Professional Personnel

		Hours		Amount
Principal				
JG-Principal Architect				
4 - Garcia, Joseph	8/16/2017	2.50	310.00	775.00
Prepare permit package				
4 - Garcia, Joseph	8/17/2017	3.50	310.00	1,085.00
Prepare permit package				
4 - Garcia, Joseph	8/18/2017	3.00	310.00	930.00
Prepare permit package				
4 - Garcia, Joseph	8/21/2017	5.00	310.00	1,550.00
Meeting with City of Stockton Building and Fire Officials, conference call with Client and Counsel				
4 - Garcia, Joseph	8/22/2017	.75	310.00	232.50
Coordinate visit for staff, review status of permit submittal package, correspond with Client				
4 - Garcia, Joseph	8/31/2017	1.25	310.00	387.50
Prepare construction documents				
Andrew Trias				
AT-Production Project Manager I				
93 - Trias, Andrew	8/16/2017	4.00	115.00	460.00
Construction Documents				
93 - Trias, Andrew	8/17/2017	4.00	115.00	460.00
Construction Documents				
93 - Trias, Andrew	8/18/2017	4.00	115.00	460.00
Construction Documents				
93 - Trias, Andrew	8/23/2017	1.00	115.00	115.00
Construction Documents				
CAD Operator				
EH-CAD Operator I				
189 - Harris, Elizabeth	8/17/2017	2.00	115.00	230.00
Prepare improvement plans.				
189 - Harris, Elizabeth	8/18/2017	6.00	115.00	690.00
Prepare improvement plans.				
189 - Harris, Elizabeth	8/21/2017	3.00	115.00	345.00
Attend meeting with City of Stockton. In-house coordination.				
189 - Harris, Elizabeth	8/28/2017	2.00	115.00	230.00
Construction Drawings for Shell build-out				
189 - Harris, Elizabeth	8/29/2017	1.00	115.00	115.00
Construction Drawings for Shell build-out				
189 - Harris, Elizabeth	8/30/2017	3.00	115.00	345.00
Construction Drawings for Shell build-out				
189 - Harris, Elizabeth	8/31/2017	2.00	115.00	230.00
Construction Drawings for Shell build-out.				
Total		48.00		8,640.00
Total Labor				8,640.00

Project	2017.206.02	Stockton v. Bennett: Shell Improv Plan	Invoice	1
Reimbursable Expenses				
Reproduction Services				
AP 11854	8/26/2017	ARC / Invoice: 1758200R (17206.2), 8/26/2017	344.25	
AP 11851	9/12/2017	ARC / Invoice: 1768377 (17206.2), 9/12/2017	1,042.20	
		1.1 times	1,386.45	1,525.10
Misc Reimbursable Expense				
EX 0000003174	9/8/2017	Garcia, Joseph / City of Stockton re plan check fees	531.00	
		1.0 times	531.00	531.00
Total Reimbursables			1,917.45	2,056.10
			Total this Project	\$10,696.10
			Total this Report	\$10,696.10



RICHARD AVELAR & ASSOCIATES ARCHITECTS

318 HARRISON STREET, SUITE 103 OAKLAND CA 94607 (510) 893-5501 FAX (510) 893-5874

A California Corporation TAX ID: 94-2863677

September 25, 2017

Invoice No: 2017.206.00 - 3

Due Date: October 25, 2017

Anthony Vignolo
Downey Brand
3425 Brookside Rd, Ste A
Stockton, CA 95219

RE: JOB # 17206 -- Stockton v. Bennett: Expert Services
[Time plus Expenses]

Professional Architectural Services from August 1, 2017 to August 31, 2017

Professional Personnel

	Hours	Amount
Principal	4.75	1,472.50
Support Staff	48.50	7,010.00
CAD Operator	-7.00	-805.00
Total	46.25	7,677.50
Total Labor		7,677.50

Reimbursable Expenses

Mileage	1.0 times	240.00	240.00
Shipping/Delivery	1.1 times	18.31	20.14
Total Reimbursables		258.31	260.14

Total This Invoice \$7,937.64

Unpaid Invoices

Number	Date	Balance
2	8/24/2017	10,712.50
Total		10,712.50

Account Total Due **\$18,650.14**

Billings to Date

	Current	Prior	Total	Received	A/R Balance
Labor	7,677.50	27,060.00	34,737.50		
Expense	260.14	0.00	260.14		
Totals	7,937.64	27,060.00	34,997.64	16,347.50	18,650.14

Billing Backup

Monday, September 25, 2017

RICHARD AVELAR & ASSOCIATES,
ARCHITECTS

Invoice 3 Dated 9/25/2017

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Professional Personnel

		Hours		Amount
Principal				
	JG-Principal Architect			
4 - Garcia, Joseph	8/11/2017	3.75	310.00	1,162.50
	Comparison of issued permits, code analysis			
4 - Garcia, Joseph	8/17/2017	.50	310.00	155.00
	Conference call with Anthony Vignolo and Kit Bennett			
4 - Garcia, Joseph	8/23/2017	.25	310.00	77.50
	Conference call with Kit Bennett			
4 - Garcia, Joseph	8/31/2017	.25	310.00	77.50
	Telephone conversation with Anthony Vignolo			
Support Staff				
	MP-Non-Technical Project Assistant			
118 - Penland, Maxwell	8/7/2017	8.00	85.00	680.00
	Site Inspection/Observation			
118 - Penland, Maxwell	8/8/2017	2.00	85.00	170.00
	Review/Catalog field notes, photos, samples, etc.			
	CB-Litigation Analyst			
38 - Brocchus, Christine	8/1/2017	4.00	160.00	640.00
	Document review and summarize permit information.			
38 - Brocchus, Christine	8/2/2017	2.50	160.00	400.00
	Prepare permit data.			
38 - Brocchus, Christine	8/4/2017	.50	160.00	80.00
	Coordination and review of project data.			
38 - Brocchus, Christine	8/8/2017	2.50	160.00	400.00
	Prepare matrix of permit and violation data.			
38 - Brocchus, Christine	8/9/2017	3.00	160.00	480.00
	Review violation notices and city documents; update matrix.			
38 - Brocchus, Christine	8/10/2017	3.00	160.00	480.00
	Update violation matrix.			
38 - Brocchus, Christine	8/11/2017	3.75	160.00	600.00
	Update matrix of violations.			
38 - Brocchus, Christine	8/14/2017	2.00	160.00	320.00
	Review violation notices.			
38 - Brocchus, Christine	8/15/2017	.75	160.00	120.00
	Review violation notices.			
38 - Brocchus, Christine	8/16/2017	2.50	160.00	400.00
	In house meeting; review fire sprinkler plan and inspection photos.			
38 - Brocchus, Christine	8/17/2017	1.00	160.00	160.00
	Conference call, review permits and as built drawings.			
38 - Brocchus, Christine	8/18/2017	1.00	160.00	160.00
	Prepare for meeting; review site inspection data.			
38 - Brocchus, Christine	8/21/2017	5.00	160.00	800.00
	Meeting with City Inspectors at Building Department; call with counsel.			

Project	2017.206.00	Stockton v. Bennett: Expert Services	Invoice	3
38 - Brocchus, Christine	8/22/2017	.75 160.00	120.00	
Review meeting notes, correspondence.				
38 - Brocchus, Christine	8/23/2017	2.00 160.00	320.00	
Review meeting data, prepare meeting notes, correspondence.				
38 - Brocchus, Christine	8/30/2017	2.25 160.00	360.00	
Review permits and violations for life safety issues.				
38 - Brocchus, Christine	8/31/2017	2.00 160.00	320.00	
Review progress of shell scope and life safety items.				
CAD Operator				
EH-CAD Operator 1				
189 - Harris, Elizabeth	6/20/2017	-5.00 115.00	-575.00	
Site visit [transferred to 17206.1 As-built]				
189 - Harris, Elizabeth	6/26/2017	-2.00 115.00	-230.00	
Code research [transferred to 17206.1 As-built]				
Total		46.25	7,677.50	
Total Labor				7,677.50
Reimbursable Expenses				
Mileage				
EX 0000003202	8/3/2017	Whitworth, Bob / 145.00 miles @ 0.50	72.50	
EX 0000003202	8/7/2017	Whitworth, Bob / 145.00 miles @ 0.50	72.50	
EX 0000003189	8/7/2017	Harris, Elizabeth / 104.00 miles @ 0.50	52.00	
EX 0000003195	8/7/2017	Penland, Maxwell / 86.00 miles @ 0.50	43.00	
			1.0 times	240.00
				240.00
Shipping/Delivery				
AP 11792	8/31/2017	Federal Express / Delivery to Christopher Bennett @ Downey Brand LLP / Invoice: 5-901-34502, 8/18/2017	18.31	
			1.1 times	20.14
Total Reimbursables			258.31	260.14
Total this Project				\$7,937.64
Total this Report				\$7,937.64



RICHARD AVELAR & ASSOCIATES ARCHITECTS

318 HARRISON STREET, SUITE 103 OAKLAND CA 94607 (510) 893-5501 FAX (510) 893-5874

A California Corporation TAX ID: 94-2863677

September 25, 2017

Invoice No: 2017.206.03 - 1

Due Date: October 25, 2017

Anthony Vignolo
Downey Brand
3425 Brookside Rd, Ste A
Stockton, CA 95219

RE: JOB # 17206.2 -- Stockton v. Bennitt: Suite 1 Tenant Improvement
[Time plus Expenses]

Professional Architectural Services from August 1, 2017 to August 31, 2017

Professional Personnel

	Hours	Amount	
CAD Operator	1.00	115.00	
Total	1.00	115.00	
Total Labor			115.00

Reimbursable Expenses

Reproduction Services	1.1 times	180.28	198.31
Misc Reimbursable Expense	1.0 times	395.00	395.00
Total Reimbursables		575.28	593.31

Total This Invoice \$708.31

Billings to Date

	Current	Prior	Total	Received	A/R Balance
Labor	115.00	0.00	115.00		
Expense	593.31	0.00	593.31		
Totals	708.31	0.00	708.31	0.00	708.31

Project 2017.206.03

Stockton v. Bennett: Suite 1 Tenant

Invoice 1

Billing Backup

Monday, September 25, 2017

RICHARD AVELAR & ASSOCIATES,
ARCHITECTS

Invoice 1 Dated 9/25/2017

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Professional Personnel

		Hours	Amount	
CAD Operator				
EH-CAD Operator I				
189 - Harris, Elizabeth	8/31/2017	1.00	115.00	115.00
Suite 1 - Tenant improvement package,				
Total		1.00		115.00
Total Labor				115.00

Reimbursable Expenses

Reproduction Services

AP 11852	9/12/2017	<input type="checkbox"/> ARC / Invoice: 1768367 (17206.3), 9/12/2017	180.28	
		1.1 times	180.28	198.31

Misc Reimbursable Expense

EX 0000003174	9/8/2017	<input type="checkbox"/> Garcia, Joseph / City of Stockton re plan check fees	395.00	
		1.0 times	395.00	395.00
Total Reimbursables			575.28	593.31

Total this Project \$708.31**Total this Report \$708.31**



PO Box 192224
San Francisco, CA 94119-2224

TEMP RETURN SERVICE REQUESTED

INVOICE NO. **1768367**

INVOICE DATE **09/12/17**

WORK ORDER# **P1377495**

Cust# 20113
ATTN: Elizabeth Harris
RICHARD AVELAR & ASSOCIATES
318 HARRISON ST SUITE 103
OAKLAND, CA 94607

SHIP TO:

Richard Avelar & Associates
318 Harrison St Ste 103
Oakland, CA 94607-4133

16

JOB DUE: 09/08/17 at 08:00AM

Will Call

CONTACT		PHONE	PURCHASE ORDER#		SALES REP		
Elizabeth Harris/RICHARD AVELAR &		510.893.6501	Stockton TI		Nicola Jetland		
JOB	JOB NAME	BILLER		JOB			
Stockton TI	172023	Stockton TI		DAVID LIEBAN 005			
QTY	DESCRIPTION	UNIT PRICE	AMOUNT	QTY	DESCRIPTION	UNIT PRICE	AMOUNT
8509.01	ORDER PROCESSING	1	5.80	1	EA		
6121	DIGITAL SETUP/PLOT FULLSIZE	3	9.75	3	EA		
1601	RPC BOND	3	18.45	90	SP		
2200.03	SMART COLOR - LINE GRAPHICS	2	165.00	60	SP		
60% Discount this work order.							
1624	STAPLING - PER SET (UP TO 60 SHEETS)	5	11.25	5	EA		
1900	B&W PRINTS 8.5X11	113	25.99	226	EA		
1617.01	PREMIUM COVER STOCK 8.5X11	2	1.58	2	EA		
1926	ACETATE COVERS 8.5X11	2	3.50	2	EA		
1928.01	VINYL BACKS 8.5X11	2	4.60	2	EA		
1950.02	GBC BINDING - UP TO 1"	2	16.00	2	EA		
5204.01	WRAPPING	1	2.10	1	EA		
ORDER NOTES							
Please print 5 full size sets							
Print 2 copies of the Specifications							

RECEIVED

SEP 18 2017

RICHARD AVELAR & ASSOCIATES

For Billing Inquiries, please contact your local branch at 925 682-6930

For Account Inquiries and Payment Information, please call 415-512-6573

SUB TOTAL	DISCOUNT	SALES TAX	TOTAL	DEPOSIT	BALANCE DUE
264.02	-98.00	15.26	180.28		180.28

Invoices undisputed for 45 days are final.

1377495

TERMS: Net 30 Days

Please Remit To: ARC P.O. Box 192224 San Francisco, CA 94119-2224

AM

/mnt/vouch1/ardocs/201709/20113/1377495.pdf



**CITY OF
ROCKTON**

Payment Receipt

Check #: CREDIT CARD
Receipt #: 5050086
Money Received By: MJESUS
Payor: Joseph Garcia
Record Address: 1825 PACIFIC AV, STOCKTON, CA 95204
Parcel #: 13702042

Re: RAA Job# 17206

Case Number	Account Number	Description	Date Paid	Amount Due	Amount Paid
BP17-05937	048-1830-345.20-00	Plan Review (Shell)	9/8/17	\$531.00	\$531.00
				Total Paid:	\$531.00
BP17-05942	048-1830-345.20-00	Plan Review (Suite 1 TI)	9/8/17	\$395.00	\$395.00
				Total Paid:	\$395.00
				Grand Total:	\$926.00
				Balance Due:	\$0.00

PLAN CHECK FEES
1825 PACIFIC AVE.

CY-STOCKTON BLDG MFR
 345 N EL DORADO ST
 STOCKTON, CA. 95202
 209-937-6421

Sale

XXXXXXXXXXXX9493

Entry Method: Chip

Total: \$ 926.00

09/08/17

11:04:15

Inv # 00000007

Appr Code: 02475C

Approved: On:

CHASE VISA

ATD: A300000031010

THR: 06 89 00 00 00

ISI: F8 00

Customer Care

「ハルカ、アツキ」

Invoice Detail

Permit ID #: BP17-05942

Invoice #: 144021

Invoice Date: 09/08/2017 10:44:58

Period	Fee Item
FINAL	Plan Review

Qty	Fee
1	\$395.00

Total Fee: \$395.00

Re: RAA Job # 17206.03
Suite 1 Tenant Improvement



RICHARD AVELAR & ASSOCIATES ARCHITECTS

318 HARRISON STREET, SUITE 103 OAKLAND CA 94607 (510) 893-5501 FAX (510) 893-5874

A California Corporation TAX ID: 94-2863677

October 30, 2017

Invoice No: 2017.206.01 - 2

Due Date: November 29, 2017

Anthony Vignolo
Downey Brand
3425 Brookside Rd, Ste A
Stockton, CA 95219

RE: JOB # 17206.1 -- Stockton v. Bennitt: As-built Drawings
[Time plus Expenses]

Professional Architectural Services from September 1, 2017 to September 30, 2017

Professional Personnel

	Hours	Amount
Principal	5.50	1,705.00
Total	5.50	1,705.00
Total Labor		1,705.00
Total This Invoice		<u><u>\$1,705.00</u></u>

Unpaid Invoices

Number	Date	Balance
1	9/25/2017	28,636.25
Total		28,636.25

Account Total Due **\$30,341.25**

Billings to Date

	Current	Prior	Total	Received	A/R Balance
Labor	1,705.00	28,563.75	30,268.75		
Expense	0.00	72.50	72.50		
Totals	1,705.00	28,636.25	30,341.25	0.00	30,341.25

If you have questions, please contact us by telephone at (510) 893-5501, Option 4 or via e-mail at RAAaccounting@ravelar.com. For information on how to pay via credit card, please email our Accounting Dept at the email provided.

Project 2017.206.01

Stockton v. Bennitt: As-built Dwgs

Invoice 2

Billing Backup

Monday, October 30, 2017

RICHARD AVELAR & ASSOCIATES,
ARCHITECTS

Invoice 2 Dated 10/30/2017

4:20:50 PM

Professional Personnel

		Hours		Amount
Principal				
JG-Principal Architect				
4 - Garcia, Joseph	9/7/2017	3.00	310.00	930.00
	Prepare construction documents for shell improvement plan permit			
4 - Garcia, Joseph	9/8/2017	2.50	310.00	775.00
	Submit construction documents for Shell Improvement Plan permit			
	Total	5.50		1,705.00
	Total Labor			1,705.00

Total this Project \$1,705.00**Total this Report \$1,705.00**



RICHARD AVELAR & ASSOCIATES ARCHITECTS

318 HARRISON STREET, SUITE 103 OAKLAND CA 94607 (510) 893-5501 FAX (510) 893-5874

A California Corporation TAX ID: 94-2863677

October 30, 2017

Invoice No: 2017.206.02 - 2

Due Date: November 29, 2017

Anthony Vignolo
Downey Brand
3425 Brookside Rd, Ste A
Stockton, CA 95219

RE: JOB # 17206.2 -- Stockton v. Bennitt: Shell Improvement Plan Drawings
[Time plus Expenses]

Professional Architectural Services from September 1, 2017 to September 30, 2017

Professional Personnel

	Hours	Amount
Principal	7.50	2,430.00
Staff Architect	5.75	1,293.75
Support Staff	.25	40.00
CAD Operator	68.25	7,848.75
Total	81.75	11,612.50
Total Labor		11,612.50

Total This Invoice \$11,612.50

Unpaid Invoices

Number	Date	Balance
1	9/25/2017	10,696.10
Total		10,696.10

Account Total Due \$22,308.60

Billings to Date

	Current	Prior	Total	Received	A/R Balance
Labor	11,612.50	8,640.00	20,252.50		
Expense	0.00	2,056.10	2,056.10		
Totals	11,612.50	10,696.10	22,308.60	0.00	22,308.60

If you have questions, please contact us by telephone at (510) 893-5501, Option 4 or via e-mail at RAAaccounting@ravelar.com. For information on how to pay via credit card, please email our Accounting Dept at the email provided.

Billing Backup

Monday, October 30, 2017

RICHARD AVELAR & ASSOCIATES,
ARCHITECTS

Invoice 2 Dated 10/30/2017

4:20:57 PM

Professional Personnel

		Hours		Amount
Principal				
JG-Principal Architect				
4 - Garcia, Joseph	9/13/2017	.50	310.00	155.00
Review plan check comments				
4 - Garcia, Joseph	9/14/2017	1.50	310.00	465.00
Review plan check comments, discuss with Kit Bennitt				
4 - Garcia, Joseph	9/15/2017	1.00	310.00	310.00
Review plan check comments				
4 - Garcia, Joseph	9/20/2017	.75	310.00	232.50
Plan check comments				
4 - Garcia, Joseph	9/22/2017	1.00	310.00	310.00
Plan check comments, review with City of Stockton				
4 - Garcia, Joseph	9/25/2017	.50	310.00	155.00
Conference call with Kit Bennitt				
4 - Garcia, Joseph	9/29/2017	.75	310.00	232.50
Plan check comments				
TS-Principal Construction Consultant				
10 - Stokes, Timothy	9/4/2017	1.50	380.00	570.00
Estimate value of shell improvements				
Staff Architect				
MB-Staff Architect				
91 - Behrendt, Maureen	9/6/2017	5.50	225.00	1,237.50
Specifications for Shell build-out				
91 - Behrendt, Maureen	9/29/2017	.25	225.00	56.25
Discuss scope revisions.				
Support Staff				
CB-Litigation Analyst				
38 - Brochus, Christine	9/25/2017	.25	160.00	40.00
In house meeting				
CAD Operator				
EH-CAD Operator I				
189 - Harris, Elizabeth	9/1/2017	4.00	115.00	460.00
Repair drawings for Shell project.				
189 - Harris, Elizabeth	9/6/2017	1.00	115.00	115.00
Construction drawings.				
189 - Harris, Elizabeth	9/7/2017	3.50	115.00	402.50
Construction drawings.				
189 - Harris, Elizabeth	9/8/2017	.75	115.00	86.25
Finalize Construction Drawings.				
189 - Harris, Elizabeth	9/15/2017	5.00	115.00	575.00
Prepare Roof plan and prep base plans to send to MEP consultants.				
Review Plan check comments.				

Project	2017.206.02	Stockton v. Bennitt: Shell Improv Plan		Invoice	2
189 - Harris, Elizabeth	9/19/2017	2.00	115.00	230.00	
Modify plans to address plan check comments.					
189 - Harris, Elizabeth	9/20/2017	7.00	115.00	805.00	
Modify plans to address plan check comments.					
189 - Harris, Elizabeth	9/21/2017	6.00	115.00	690.00	
Prepare options for second egress stair to suite 3/4.					
189 - Harris, Elizabeth	9/22/2017	5.00	115.00	575.00	
Finalize options for second egress from suite 3/4. Conference call with city of Stockton. Continue to revise plans in response to plan check comments.					
189 - Harris, Elizabeth	9/25/2017	7.00	115.00	805.00	
Prepare proposed stair plan and south exterior elevation and details. Pick up plan check comments.					
189 - Harris, Elizabeth	9/26/2017	5.00	115.00	575.00	
Modify plans to address plan check comments.					
189 - Harris, Elizabeth	9/27/2017	8.00	115.00	920.00	
Modify plans to address plan check comments.					
189 - Harris, Elizabeth	9/28/2017	7.00	115.00	805.00	
Modify plans to address plan check comments.					
189 - Harris, Elizabeth	9/29/2017	7.00	115.00	805.00	
Modify plans to address plan check comments.					
Total		81.75		11,612.50	
Total Labor					11,612.50
Total this Project					\$11,612.50
Total this Report					\$11,612.50



RICHARD AVELAR & ASSOCIATES ARCHITECTS

318 HARRISON STREET, SUITE 103 OAKLAND CA 94607 (510) 893-5501 FAX (510) 893-5874

A California Corporation TAX ID:94-2863677

October 30, 2017

Invoice No: 2017.206.03 - 2

Due Date: November 29, 2017

Anthony Vignolo
Downey Brand
3425 Brookside Rd, Ste A
Stockton, CA 95219

RE: JOB # 17206.2 - Stockton v. Bennitt: Suite 1 Tenant Improvement
[Time plus Expenses]

Professional Architectural Services from September 1, 2017 to September 30, 2017

Professional Personnel

	Hours	Amount
Principal	6.25	2,007.50
Staff Architect	7.25	1,631.25
CAD Operator	42.75	4,916.25
Total	56.25	8,555.00
Total Labor		8,555.00

Total This Invoice \$8,555.00

Unpaid Invoices

Number	Date	Balance
1	9/25/2017	708.31
Total		708.31

Account Total Due \$9,263.31

Billings to Date

	Current	Prior	Total	Received	A/R Balance
Labor	8,555.00	115.00	8,670.00		
Expense	0.00	593.31	593.31		
Totals	8,555.00	708.31	9,263.31	0.00	9,263.31

If you have questions, please contact us by telephone at (510) 893-5501, Option 4 or via e-mail at RAAaccounting@ravelar.com. For information on how to pay via credit card, please email our Accounting Dept at the email provided.

Billing Backup

Monday, October 30, 2017

RICHARD AVELAR & ASSOCIATES,
ARCHITECTS

Invoice 2 Dated 10/30/2017

4:21:03 PM

Professional Personnel

		Hours		Amount
Principal				
	JG-Principal Architect			
4 - Garcia, Joseph	9/7/2017	2.50	310.00	775.00
	Prepare construction documents for Suite 1 permit			
4 - Garcia, Joseph	9/8/2017	1.50	310.00	465.00
	Submit construction documents for Suite 1 permit			
4 - Garcia, Joseph	9/20/2017	.50	310.00	155.00
	Plan check comments			
4 - Garcia, Joseph	9/22/2017	.50	310.00	155.00
	Plan check comments, review with City of Stockton			
4 - Garcia, Joseph	9/29/2017	.25	310.00	77.50
	Plan check comments			
	TS-Principal Construction Consultant			
10 - Stokes, Timothy	9/6/2017	1.00	380.00	380.00
	Estimate value of tenant improvements			
Staff Architect				
	MB-Staff Architect			
91 - Behrendt, Maureen	9/7/2017	7.00	225.00	1,575.00
	Specifications TI project.			
91 - Behrendt, Maureen	9/29/2017	.25	225.00	56.25
	Discuss scope revisions.			
CAD Operator				
	EH-CAD Operator I			
189 - Harris, Elizabeth	9/5/2017	7.00	115.00	805.00
	Construction drawings.			
189 - Harris, Elizabeth	9/6/2017	7.00	115.00	805.00
	Construction drawings.			
189 - Harris, Elizabeth	9/7/2017	4.00	115.00	460.00
	Construction Drawings.			
189 - Harris, Elizabeth	9/8/2017	.75	115.00	86.25
	Finalize Construction Drawings.			
189 - Harris, Elizabeth	9/15/2017	1.00	115.00	115.00
	Review plan check comments. Begin modifying drawings to address plan check comments.			
189 - Harris, Elizabeth	9/18/2017	8.00	115.00	920.00
	Prepare additional details to address plan check comments.			
189 - Harris, Elizabeth	9/19/2017	6.00	115.00	690.00
	Prepare additional details, modify plans, and begin plan check response letter addressing plan check comments.			
189 - Harris, Elizabeth	9/20/2017	1.00	115.00	115.00
	Modify plans to address plan check comments.			
189 - Harris, Elizabeth	9/21/2017	1.00	115.00	115.00
	Modify plans to address plan check comments.			

Project	2017,206.03	Stockton v. Bennett: Suite 1 Tenant			Invoice	2
189 - Harris, Elizabeth	9/22/2017	2.00	115.00		230.00	
Conference call with City of Stockton. Revise plans in response to plan check comments.						
189 - Harris, Elizabeth	9/25/2017	1.00	115.00		115.00	
Prepare option for bathroom layout.						
189 - Harris, Elizabeth	9/26/2017	3.00	115.00		345.00	
Modify plans to address plan check comments.						
189 - Harris, Elizabeth	9/29/2017	1.00	115.00		115.00	
Modify plans to address plan check comments.						
Total		56.25			8,555.00	
Total Labor						8,555.00
Total this Project						\$8,555.00
Total this Report						\$8,555.00



RICHARD AVELAR & ASSOCIATES ARCHITECTS

318 HARRISON STREET, SUITE 103 OAKLAND CA 94607 (510) 893-5501 FAX (510) 893-5874

A California Corporation TAX ID: 94-2863677

October 30, 2017

Invoice No: 2017.206.00 - 4

Due Date: November 29, 2017

Anthony Vignolo
Downey Brand
3425 Brookside Rd, Ste A
Stockton, CA 95219

RE: JOB # 17206 - Stockton v. Bennett: Expert Services
[Time plus Expenses]

Professional Architectural Services from September 1, 2017 to September 30, 2017

Professional Personnel

	Hours	Amount
Principal	.25	77.50
Support Staff	6.50	1,040.00
Total	6.75	1,117.50
Total Labor		1,117.50

Interest

1.50 % of 10,712.50 (balance over 60 days) 160.69

Total This Invoice \$1,278.19

Unpaid Invoices

Number	Date	Balance
2	8/24/2017	10,712.50
3	9/25/2017	7,937.64
Total		18,650.14

Account Total Due **\$19,928.33**

Billings to Date

	Current	Prior	Total	Received	A/R Balance
Labor	1,117.50	34,737.50	35,855.00		
Expense	0.00	260.14	260.14		
Interest	160.69	0.00	160.69		
Totals	1,278.19	34,997.64	36,275.83	16,347.50	19,928.33

If you have questions, please contact us by telephone at (510) 893-5501, Option 4 or via e-mail at RAAaccounting@ravelar.com. For information on how to pay via credit card, please email our Accounting Dept at the email provided.

Project 2017.206.00

Stockton v. Bennett: Expert Services

Invoice 4

Billing Backup

Monday, October 30, 2017

RICHARD AVELAR & ASSOCIATES,
ARCHITECTS

Invoice 4 Dated 10/30/2017

4:20:44 PM

Professional Personnel

		Hours		Amount
Principal				
JG-Principal Architect				
4 - Garcia, Joseph	9/7/2017	.25	310.00	77.50
Telephone call with Anthony Vignolo				
Support Staff				
CB-Litigation Analyst				
38 - Brocchus, Christine	9/1/2017	.75	160.00	120.00
Review violation notices for scope items.				
38 - Brocchus, Christine	9/6/2017	.50	160.00	80.00
Permit application, review project data.				
38 - Brocchus, Christine	9/7/2017	2.00	160.00	320.00
In house meeting re violation information for drawings.				
38 - Brocchus, Christine	9/8/2017	.25	160.00	40.00
Correspondence				
38 - Brocchus, Christine	9/15/2017	1.50	160.00	240.00
Review plan check and non-permitted items				
38 - Brocchus, Christine	9/19/2017	1.50	160.00	240.00
Review non-permitted areas.				
Total		6.75		1,117.50
Total Labor				1,117.50
Total this Project				\$1,117.50
Total this Report				\$1,117.50

1 **PROOF OF SERVICE**

2 Case: Elsa Flores dba Casa Flores, Brenda Sandigo dba Gusty's Wings, Troy Burke and Rosann
3 Casciaro-Burke dba Empresso Coffee vs. City of Stockton

4 Case No.: STK-CV-UBC-2018-9502

5 I am employed in the County of San Joaquin, State of California, over the age of eighteen
6 years, and not a party to the within action. My business address is c/o Mohan, Harris, Ruiz,
7 Wortmann, Perisho & Rubino, LLP 3439 Brookside Road, Suite 208, Stockton, California
8 95219.

9 On August 20, 2018, I served the following document(s) described as:

10 **AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF BASED
11 ON VIOLATION OF CIVIL RIGHTS (PROCEDURAL DUE PROCESS, EQUAL
12 PROTECTION, TAKING OF PROPERTY, AND FOURTH AMENDMENT
13 SEIZURE OF PROPERTY)**

14 Addressed to:

15 **City of Stockton**

16 **Attn: City Clerk**

17 **425 N. El Dorado Street, 1st Floor**
18 **Stockton, CA 95202**

19 ☒ **BY PERSONAL SERVICE [CCP §1011]** - I caused such envelope to be delivered by
20 hand to the person identified [above] or [in the attached Service List of Participants].

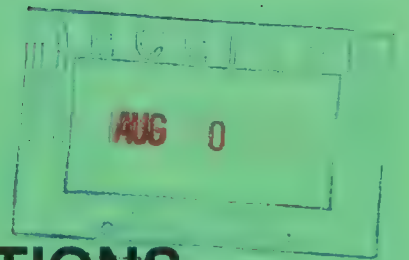
21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23 Executed this 20th day of August 2018 at Stockton, California.

24 
25 Bee Speer
26
27
28

Court Couriers

Mihran Bobson 209.470.0460



COURT FILING INSTRUCTIONS

Requesting Firm: MOHAN, HARRIS, RUIZ, WORTMANN, PERISHO & RUBINO, LLP

Date: 8/20/18

Attorney: ☐ FRANCIS X. MOHAN III ☐ JOHN M. HARRIS ☒ S. DEAN RUIZ

☐ SHARON A. WORTMANN ☐ JASON L. PERISHO ☐ HEATHER D. RUBINO

Assistant: ☐ Teresa G. ☐ Brenda F. ☒ Bee S. ☐ Natalie K. ☐ Lisa O. ☐ Shelby G.

Address: 3439 Brookside Road, Suite 208 | Stockton, CA 95219

Phone: 209.957.0660

Fax: 209.957.0595

FILE THE FOLLOWING DOCUMENTS AS INDICATED BELOW:

Case Title: _____

Case No: _____ Internal File No: _____

☐ Civil ☐ Probate ☐ Family Law Dept. ☐ Recorders ☐ Other: _____

County/District: San Joaquin County ☐ Stockton ☐ Lodi ☐ Manteca ☐ Tracy

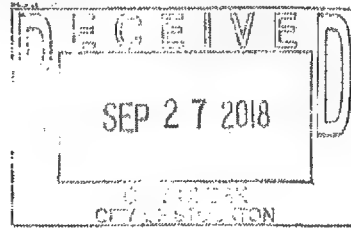
☐ Fees Attached: \$ _____ ☐ Obtain Judge's Signature ☐ Deliver to Dept. #: _____

☐ File & Return Endorsed Copies ☐ RUSH Complete By: _____

Instructions:

Mihran,

Please serve City of Stockton.
Thank you.



1 STANLEY GOFF (Bar No. 289564)
2 LAW OFFICE OF STANLEY GOFF
3 15 Boardman Place Suite 2
4 San Francisco, CA 94103
5 Telephone: (415) 571-9570
6 Email: scraiggoft@aol.com

7 Attorneys for Plaintiff Marsha Costanzo

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 MARSHA COSTANZO;

11 Plaintiffs,

12 v.

13 CITY OF STOCKTON; STOCKTON
14 POLICE OFFICER CELENTANO;
15 STOCKTON POLICE OFFICER WEIR;
16 AMERICAN MEDICAL RESPONSE AND
17 DOES 1-25;

18 Defendants.

CASE NO.:

COMPLAINT FOR DAMAGES

As To Stockton

1. Violation of Plaintiff's Fourteenth
Amendment Rights 42 U.S.C §1983
(Deliberate Indifference;
2. Negligence;

As To American Medical Response

3. Negligence

DEMAND FOR JURY TRIAL

19 Plaintiff, demanding a jury trial, brings this action against Defendants CITY OF
20 STOCKTON, STOCKTON POLICE OFFICER CALENTANO, STOCKTON POLICE
21 OFFICER WEIR, AMERICAN MEDICAL RESPONSE and DOES 1-25 inclusive, for general,
22 consequential, compensatory, punitive and statutory damages, costs and attorneys' fees resulting
23

1 from defendants' unconstitutional and tortious conduct, and as grounds therefore allege as
2 follows:

3 **I. PARTIES**

4 1. Plaintiff Marsha Costanzo, was at all times relevant to this complaint, living in the City of
5 Stockton, which is located within the Eastern District of California.

6 2. Defendant CITY OF STOCKTON is a legal entity established under the laws of the state
7 of California with all the powers specified and necessarily implied by the Constitution and laws
8 of the State of California, and is a municipality located within the Eastern District of California.

9 3. Defendant CELENTANO, is police officer for the Stockton Police Department and was
10 employed by the City of Stockton at the time of the incident in question. This Defendant is being
11 sued in his individual capacity.

12 4. Defendant WEIR, is police officer for the Stockton Police Department and was employed
13 by the City of Stockton at the time of the incident in question. This Defendant is being sued in
14 her individual capacity.

15 5. All of the above-listed defendants acted under the color of law as it pertains to this
16 complaint.

17 6. Defendant AMERICAN MEDICAL RESPONSE is a business entity doing business
18 under the laws of the state of California and conducts business in the City of Stockton located
19 within the Eastern District of California.

20 7. DOE'S AMERICAN MEDICAL RESPONSE workers were employed by AMERICAN
21 MEDICAL RESPONSE at the time of the incident in question. These DOE defendants are being
22 sued in their individual and official capacities.

23 **II. JURISDICTION AND VENUE**

24 8. This action is brought pursuant to 42 U.S.C. §§ 1983, 1988 and 12132 and the Fourth and
Fifteenth Amendments to the United States Constitution, made applicable to Defendants

1 through the Fourteenth Amendment to the United States Constitution. This Court has jurisdiction
2 over plaintiffs' claims under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a). This Court has further
3 jurisdiction over plaintiffs' state law claims under 28 U.S.C. § 1367 as those claims form part of
4 the same case and controversy under Article III of the United States Constitution.

5 9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the events giving rise
6 to this action occurred in the City of Stockton California, which is located in this district.

7 **III. STATEMENT OF FACTS**

8 10. On or around September 10, 2017, at approximately 4:35 p.m., Marsha Contanzo
9 (hereinafter referred to as "Plaintiff") who was age 68 year old at the time, was arrested by
10 Stockton Police Officers Celantano and Weir (hereinafter referred to as "Defendant Officers").

11 11. Officer Weir suggested that the plaintiff take off all of he jewelry and to not resist. The
12 plaintiff complied and was subsequently handcuffed.

13 12. As the plaintiff and the defendant officers approached a patrol car, the plaintiff suffered a
14 severe panic attack, in which her chest began to tighten up and she was having difficulty
15 breathing.

16 13. Officer Celentano stated "let's just haul her off to jail", however, Officer Weir stated that
17 the plaintiff was in her squad car and that plaintiff was not responding and needed medical
18 attention.

19 14. Officer Weir began pulling on plaintiff to try to get her out of the car but the plaintiff
20 screamed with pain because her foot was twisted and caught between two bars on the floor
21 board.

22 15. Both Officer Celentano and Officer Weir began to pull on plaintiff to get her out of the
23 car with such great force that they ended up causing plaintiff to suffer bruises to her upper arms,
24 neck and breast and scraped her legs on the cement after they leaned her up against the car.

1 16. While sitting up against the patrol car directly in front of both defendant officers, the
2 plaintiff who was handcuffed behind her back and still suffering from a panic attack was allowed
3 by both defendant officers to slip off of the patrol car and onto the ground causing her injuries.

4 17. The defendant officers pulled on the plaintiff in a reckless manner to lie her down on the
5 cement sidewalk while the handcuffs were still on her. As a result, the plaintiff suffered a
6 hemotoma to her right wrist and upper right arm.

7 18. An ambulance owned and operated by American Medical Response (hereinafter AMR)
8 subsequently arrived and DOE'S AMR employees 1-25, placed the plaintiff on a stretcher and
9 into the ambulance. The plaintiff was handcuffed to the gurney in the ambulance.

10 19. After arriving at a hospital emergency room, the plaintiff, who was laying down and still
11 handcuffed to the gurney bed, was being handled by two emergency medical technicians
12 employed by AMR. The two employees picked both sides of the blanket that the plaintiff was
13 laying on to sit her upright, but they failed to notice that she was still cuffed to the gurney at the
14 time.

15 20. As a result of this negligent conduct, plaintiff's left arm was pulled with so much force,
16 that the skin on her arm split open and she suffered severe pain.

17 21. As to the state claims against the City of Stockton, plaintiff filed a timely government
18 claim against defendants pursuant to California Government Code §910, et seq., for negligence,
19 false arrest (false imprisonment). Plaintiff's claims were subsequently rejected by the City of
20 Stockton on December 20, 2017.
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IV. CAUSES OF ACTION

(Violation of Plaintiff's Fourteenth Amendment Rights 42 U.S.C §1983 (Due Process) –

As to all Defendant Officers)

22. The Defendants violated the Plaintiff's due process rights under the Fourteenth Amendment to the United States Constitution.

23. That the Defendant Officers, who both had notice that the plaintiff was suffering a panic attack, placed the Plaintiff in "actual, particularized danger" when they deliberately and intentionally began pulling on plaintiff to get her out of the patrol car with such great force that they ended up causing plaintiff to suffer bruises to her upper arms, neck and breast and scraped her legs on the cement after they leaned her up against the car.

24. That while sitting up against the patrol car directly in front of both defendant officers, the plaintiff who was handcuffed behind her back and still suffering from a panic attack was allowed by both defendant officers to slip off of the patrol car and onto the ground causing her injuries.

25. That there was ***Deliberate Indifference*** on the part of the Defendants because they had notice that the Plaintiff was suffering from a panic attack.

26. That the Plaintiff suffered ***harm*** stemming from the Defendants' ***Deliberate Indifference***, because the Plaintiff's injuries and the pain and suffering that she experienced were severely exacerbated by the Defendants conduct, and this conduct placed the Plaintiff in a worse position than she was otherwise in.

1 27. Defendant Officers violated Plaintiff's constitutional rights and resulted in Plaintiff's
2 suffering, and were a proximate and direct cause of Plaintiff's injuries.

3 28. The conduct of the Defendant Officers, was intended to cause injury to Plaintiff and was
4 done in conscious disregard of Plaintiff's rights and safety and thus constitutes malice and
5 plaintiff is entitled to recover punitive damages from the Defendant Officers in an amount
6 according to proof.

7
8 **(Negligence – As to All Defendant Officers)**

9 29. By virtue of the foregoing, Defendant Officers owed Plaintiff a duty of due care not to
10 cause the Plaintiff physical harm in their handling of the plaintiff.

11 30. That this duty was breached by defendant Weir's negligence and failure to exercise due
12 care in her handling of the Plaintiff when Officer Weir began pulling on plaintiff to try to get her
13 out of the causing the plaintiff's foot to become twisted and caught between two bars on the floor
14 board.

15 31. That this duty was further breached by both of the defendants' negligence and failure to
16 exercise due care in their handling of the Plaintiff when both Officer Celentano and Officer Weir
17 began to pull on plaintiff to get her out of the patrol car with such great force that they ended up
18 causing plaintiff to suffer bruises to her upper arms, neck and breast and scraped her legs on the
19 cement after they leaned her up against the car.

1 32. That this duty was also breached by both of the defendants' negligence and failure to
2 exercise due care in their handling of the Plaintiff when while sitting up against the patrol car
3 directly in front of both defendant officers, the plaintiff who was handcuffed behind her back and
4 still suffering from a panic attack was allowed by both defendant officers to slip off of the patrol
5 car and onto the ground causing her injuries.

6 33. As a direct and proximate cause of the aforementioned acts of Defendant, Plaintiff was
7 injured as set forth above and is entitled to compensatory damages according to proof at the time
8 of trial.

9 34. Defendant Officers are liable for all injuries caused by their acts, to the same extent as a
10 private person pursuant to California Government Code Section 820(a).

11 35. Defendants as public employees are not exonerated or immune from liability for
12 negligence for causing the Plaintiff to suffer harm pursuant to California Government Code
13 Section 820.8.

14 36. Because the Defendant Officers were acting as employees of STOCKTON at the time of
15 the incident, and because they were acting within the scope and course of their employment and
16 under the direct control and supervision of STOCKTON, STOCKTON is liable to the Plaintiff
17 for negligence pursuant to California Government Code §815.2.
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(Negligence – As to DOE ARM Employees and AMERICAN MEDICAL RESPONSE)

37. By virtue of the foregoing, Defendants owed Plaintiff a duty of due care not to cause the Plaintiff physical harm in their handling of the plaintiff.

38. That this duty was breached by defendants' negligence and failure to exercise due care in their handling of the Plaintiff when the two DOE AMR employees picked both sides of the blanket that the plaintiff was laying on to sit her upright, but failed to notice that she was still cuffed to the gurney at the time, causing the plaintiff's left arm to be pulled with so much force, that the skin on her arm split open and she suffered severe pain.

39. That as a direct and proximate cause of the aforementioned acts of defendants, Plaintiff was injured as set forth above and is entitled to compensatory damages according to proof at the time of trial.

40. Because the Defendant DOE AMR employees were acting as employees of AMERICAN MEDICAL RESPONSE at the time of the incident, and because they were acting within the scope and course of their employment and under the direct control and supervision of AMERICAN MEDICAL RESPONSE, AMERICAN MEDICAL RESPONSE is vicariously liable to the Plaintiff for negligence.

V. PRAYER FOR RELIEF

Plaintiffs pray for judgment against defendants as follows:

1. For compensatory damages and other special damages according to proof;
2. For general damages according to proof;
3. For punitive damages against all individual defendants according to proof;
4. The prejudgment interest at the legal rate according to proof;
5. For costs and reasonable attorneys' fees as provided by law; and
6. For such other relief as the Court may deem fit and proper.

VI. JURY DEMAND

Plaintiffs demand a jury trial in this action.

LAW OFFICE OF STANLEY GOFF

Dated: June 9, 2018

/s/ STANLEY GOFF

STANLEY GOFF
Attorney for Plaintiff
Marsha Costanzo

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER PETERSON, an individual

Plaintiff,

vs.

CITY OF STOCKTON, a municipal corporation; ERIC JONES, individually and in his official capacity as Chief of Police for the STOCKTON Police Department; JEREMIAH SKAGGS, individually and in his official capacity as a police officer for the STOCKTON Police Department; MELISSA WHITE, individually and in her official capacity as a police officer for the STOCKTON Police Department; DARIO DUENAS, individually and in his official capacity as a police officer for the STOCKTON Police Department; DARIUS BUHRI, individually and in his official capacity as a police officer for the STOCKTON Police Department; DANIEL VILLALOBOS, individually and in his official capacity as a police officer for the STOCKTON Police Department; and DOES 1-50, inclusive,

Defendants.

Case No.:

COMPLAINT FOR DAMAGES
(42 U.S.C §§ 1983)

JURY TRIAL DEMANDED

INTRODUCTION

1 1. This action arises out of the unlawful arrest and use of excessive force on
2 CHRISTOPHER PETERSON by Stockton Police Department (SPD) Officers. On March 19,
3 2017, at approximately 1:43 a.m., near 629 West Lincoln Road, Stockton, CA 95207 Plaintiff,
4 CHRISTOPHER PETERSON, was a passenger in a car pulled over for a traffic stop by SPD Officers
5 and ultimately beaten and severely injured.
6

JURISDICTION

7 2. This action arises under Title 42 of the United States Code, Section 1983. The
8 unlawful acts and practices alleged herein occurred in the City of Stockton, California, which is
9 within this judicial district. Title 28 United State Code Section 1391 (b) confers venue upon this
10 Court.
11

PARTIES

12 3. Plaintiff CHRISTOPHER PETERSON (“Peterson”) is a competent adult, a
13 resident of STOCKTON, CALIFORNIA, and is a United States Citizen.
14

15 4. Defendant CITY OF STOCKTON (“Defendant CITY”) is a municipal
16 corporation, duly organized and existing under the laws of the State of California. Under its
17 authority, the City operates the STOCKTON Police Department.
18

19 5. Defendant ERIC JONES, at all times mentioned herein, was employed by
20 Defendant CITY as the Chief of Police of the STOCKTON Police Department, and was acting
21 within the course and scope of that employment. He is being sued individually and in his official
22 capacity as the Chief of Police for the CITY.
23

24 6. Defendant JEREMIAH SKAGGS, at all times mentioned herein, was employed
25 by Defendant CITY as a police officer for the STOCKTON Police Department, and was acting
26 within the course and scope of that employment. He is being sued individually and in his official
27 capacity as a police officer for the CITY.

 7. Defendant MELISSA WHITE, at all times mentioned herein, was employed by
Defendant CITY as a police officer for the STOCKTON Police Department, and was acting

1 within the course and scope of that employment. She is being sued individually and in her
2 official capacity as a police officer for the CITY.

3 8. Defendant SPD DARIO DUENAS, at all times mentioned herein, was employed
4 by Defendant CITY as a police officer for the STOCKTON Police Department, and was acting
5 within the course and scope of that employment. He is being sued individually and in his official
6 capacity as a police officer for the CITY.

7 9. Defendant SPD OFFICER DARIUS BUHRI, at all times mentioned herein, was
8 employed by Defendant CITY as a police officer for the STOCKTON Police Department, and
9 was acting within the course and scope of that employment. He is being sued individually and in
10 his official capacity as a police officer for the CITY.

11 10. Defendant SPD OFFICER DANIEL VILLALOBOS, at all times mentioned
12 herein, was employed by Defendant CITY as a police officer for the STOCKTON Police
13 Department, and was acting within the course and scope of that employment. He is being sued
14 individually and in his official capacity as a police officer for the CITY.

15 11. DOES 1-50, were and at all times mentioned herein are an officers for the
16 Stockton Police Department, and are sued in their individual and official capacities.

17 12. Plaintiff is ignorant of the true names and/or capacities of defendants sued herein
18 as DOES 1 through 50, inclusive, and therefore sue said defendants by such fictitious names.
19 Plaintiff will amend this complaint to allege his true names and capacities when ascertained.
20 Plaintiff believes and alleges that each of the DOE defendants is legally responsible and liable
21 for the incident, injuries and damages hereinafter set forth. Each defendant proximately caused
22 injuries and damages because of their negligence, breach of duty, negligent supervision,
23 management or control, violation of public policy, and false arrests. Each defendant is liable for
24 his/her personal conduct, vicarious or imputed negligence, fault, or breach of duty, whether
25 severally or jointly, or whether based upon agency, employment, ownership, entrustment,
custody, care or control or upon any other act or omission. Plaintiff will ask leave to amend this
complaint subject to further discovery.

13. In doing the acts alleged herein, Defendants acted within the course and scope of

1 their employment for the CITY.

2 14. In doing the acts and/or omissions alleged herein Defendants acted under color of
3 authority and/or under color of law.

4 15. Due to the acts and/or omissions alleged herein, Defendant acted as the agent,
5 servant, and employee and/or in concert with the CITY.

6 **ADMINISTRATIVE PREREQUISITES**

7 16. Plaintiff is required to comply with an administrative tort claim requirement under
8 California law. Plaintiff filed a claim against Defendant City of Stockton on September 22,
9 2017. Plaintiff received a denial of his claim against Defendants on October 24, 2017. Plaintiff
10 has exhausted all administrative remedies pursuant to California Government Code Section 910.

11 **STATEMENT OF FACTS**

12 17. The incident took place on March 19, 2017, at approximately 1:43 a.m. The
13 location of the incident was 629 West Lincoln Road, Stockton, Ca 95207.

14 18. Two Stockton Police Department Officers pulled over a car with a shattered
15 windshield. Plaintiff, Christopher Robert Peterson, was a passenger in the car. Mr. Peterson
16 exited the car. He crossed West Lincoln Road. An Officer tackled Mr. Peterson. He landed on
17 his stomach. Several male officers struck Mr. Peterson in the back and sides with their hands,
18 knees, and feet. An officer handcuffed Peterson and ordered him to sit on the curb. Mr.
19 Peterson complied with the officer's order. Soon thereafter, an officer tackled Peterson from
20 behind. Mr. Peterson felt intense pain as his head made contact with his waist. He lost
21 consciousness briefly. Mr. Peterson regained consciousness as officers dragged him into one of
22 the officer's vehicles. He begged the officers to allow him to remain lying down until the
23 ambulance arrived due to his injury. The officers forcibly placed Mr. Peterson into the back
24 seat of the car despite his desperate plea.
25

1 him without probable cause, in violation of their training and the law. As a result of their
2 misconduct, Defendant DOES are liable for Plaintiff's injuries.

3 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

4 **SECOND CAUSE OF ACTION**

(Violation of the Fourth Amendment of the United States Constitution- Unlawful Seizure)
(42 U.S.C. § 1983)

(Against Defendants Skaggs, White, Duenas, Buhri, Villalobos, Jones, and DOES 1-50)

6 25. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 24 of this
7 Complaint.

8 26. Defendants' above-described conduct violated Plaintiff's right as provided for
9 under the Fourth Amendment to the United States Constitution to be free from unreasonable
10 searches and seizures because Defendants lacked the requisite probable cause to arrest Peterson.
11 Plaintiff did not commit a crime.

12 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

13 **THIRD CAUSE OF ACTION**

(Fourth Amendment – Excessive Force)

(42 U.S.C. § 1983)

14 **(Against Defendants Skaggs, White, Duenas, Buhri, Villalobos, Jones, and DOES 1-50)**

15 27. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 26
16 of this Complaint.

17 28. When Defendant Officers held down and assaulted Plaintiff during an unlawful
18 detention and arrest, they deprived Plaintiff of his right to be secure in his person against
19 unreasonable searches and seizures as guaranteed to Plaintiff under the Fourth Amendment to the
20 United States Constitution. The Defendant Officers' actions were excessive and unreasonable,
21 especially because Officers did not have a lawful basis to detain Plaintiff and Officers had no
22 reason to fear for their safety. Officers pinned Peterson down without cause and beat him in the
23 back and sides. After he was handcuffed and seated on the curb an officer tackled Plaintiff from
24 behind. Peterson suffered spinal fractures as a result of the officers' tackle. The officers' actions
25 violated their training and Plaintiff's constitutional rights under the Fourth Amendment.

29. As a result of his misconduct, Defendant Officers are liable for Plaintiff's injuries;

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

FOURTH CAUSE OF ACTION

(Monell - 42 U.S.C. § 1983)

(Against Defendants City, Jones, and DOES 26-50)

30. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 29 of this Complaint.

31. Plaintiff is informed and believes and thereon alleges that high-ranking City officials, including high-ranking supervisors such as DOES 1 through 50, and/or each of them, knew and/or reasonably should have known about systemic, unwarranted uses of force by Defendants Skaggs, White, Duenas, Buhri, Villalobos, and DOES 1-50, and/or the Stockton Police Department. James Smith is a developmentally delayed man who was stopped by a Stockton Police Officer for engaging in horseplay. The officer followed Smith, tackled him, restrained him, and sicced his canine officer on him. Smith suffered two broken teeth and extensive bite marks. *Smith, et al. v. City of Stockton, et al.*, U.S. Dist. Court, ED California 2016, CV-02511-MCE-AC.

32. Despite having such notice, Plaintiff is informed and believes and thereon alleges that Defendant DOES 1-50, and/or each of them, approved, ratified, condoned, encouraged, sought to cover up, and/or tacitly authorized the continuing pattern and practice of misconduct and/or civil rights violations by said officers.

33. Plaintiff is further informed and believes and thereon alleges that as a result of the deliberate indifference, reckless and/or conscious disregard of the misconduct by Defendants Skaggs, White, Duenas, Buhri, Villalobos, and DOES 1-50 and/or each of them, the Stockton Police Department encouraged these officers to continue their course of misconduct and ignored these officers' lack of training, resulting in the violation of the Plaintiff's rights as alleged herein.

34. Plaintiff further alleges that Defendant DOES 1-50, and/or each of them, were on notice of the Constitutional defects in their training of City police officers, including, but not limited to their use of excessive force.

1 35. The aforementioned acts and/or omissions and/or deliberate indifference by high
2 ranking City officials, including high ranking Stockton Police Department supervisors DOES 1-
3 50, Defendants DOES 1-50, and each of them resulted in the deprivation of Plaintiff's
4 constitutional rights including, but not limited to the right to be free from unreasonable searches
5 and seizures, as guaranteed by the Fourth Amendment to the United States Constitution, the right
6 to not be deprived of life, liberty or property without due process of the law, as guaranteed by the
7 Fourteenth Amendment to the United States Constitution and the right to be free from excessive
8 force by law enforcement officers, as guaranteed by the Fourth Amendment to the United States
9 Constitution.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

10
11 **FIFTH CAUSE OF ACTION**
12 **(Violation of CALIFORNIA CIVIL CODE §52.1)**
 (Against Defendants Skaggs, White, Duenas, Buhri, Villalobos, Jones, and DOES 1-50)

13 36. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 35 of this
14 Complaint.

15 37. Defendants' above-described conduct constituted interference, and attempted
16 interference, by threats, intimidation and coercion, with the Plaintiff's peaceable exercise and
17 enjoyment of rights secured by the Constitution and laws of the United States and the State of
18 California, in violation of California Civil Code §52.1.

19 38. As a direct and proximate result of Defendants' violations of Civil Code § 52.1,
20 Plaintiff suffered violations of her constitutional rights, and suffered damages as set forth herein.

21 39. Plaintiff is entitled to injunctive relief and an award of her reasonable attorney's
22 fees pursuant to Civil Code § 52.1(h).

23 40. Plaintiff is entitled to treble damages, but in no case less than \$4,000.00 and an
24 award of her reasonable attorney's fees pursuant to Civil Code § 52(a).
25

(Assault and Battery)
(Against Defendants Skaggs, White, Duenas, Buhri, Villalobos, and DOES 1-50)

46. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 45 of this Complaint.

47. Defendants' intentionally struck Plaintiff Peterson with their hands, knees, and feet without any just provocation or cause. Defendants' conduct was neither privileged nor justified under state statute or common law.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

EIGHTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)
(Against Defendants Skaggs, White, Duenas, Buhri, Villalobos, and DOES 1-50)

48. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 47 of this Complaint.

49. Defendants' above-described conduct was extreme, unreasonable and outrageous. Defendants injured Plaintiff upon arresting her and again while she was handcuffed and defenseless, without legal justification.

50. In engaging in the above-described conduct, Defendants intentionally ignored or recklessly disregarded the foreseeable risk that Plaintiff would suffer extreme emotional distress as a result of Defendants' conduct.

WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

JURY DEMAND

Plaintiff hereby demands a jury trial in this action.

PRAYER

WHEREFORE, Plaintiff prays for relief, as follows:

1. For general damages in a sum to be proven at trial;

2. For special damages, including but not limited to, past, present and/or future wage loss, income and support, medical expenses and other special damages in a sum to be determined according to proof;
3. For punitive damages in a sum according to proof;
4. For reasonable attorney's fees pursuant to 42 U.S.C. Section 1988;
5. For reasonable attorney's fees pursuant to California Civil Code Section 52.1;
6. For cost of suit herein incurred; and
7. For such other and further relief as the Court deems just and proper.

Dated: October 4, 2018

LAW OFFICES OF JOHN L. BURRIS

/s/ John L. Burris

John L. Burris
Benjamin Nisenbaum
James Cook
Attorneys for Plaintiff